MUNICIPAL GOVERNMENT IN IRELAND

J. J. WEBB, M.A., LL.B.

IRENE OWEN ANDREWS

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MEDIÆVAL & MODERN

Do cum Glóire Dé agus Onóra na h-Éireann

Municipal Government in Ireland

Mediæval & Modern

BY

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THE TALBOT PRESS LIMITED
89 TALBOT STREET DUBLIN
1918

Printed at
the talbot press
89 Talbot Street
Dublin

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MUNICIPAL GOVERNMENT IN IRELAND.

CHAPTER I.

The Introduction of the Chartered Borough into Ireland.

The importance of the town in the system of government established in Ireland by the Anglo-Normans is a matter which has received scant attention from historians of Irish affairs. The greatest empire builders of history, the Romans, used the municipality as an instrument for extending their sway and maintaining their power throughout the lands surrounding the Mediterranean. This was so much the case that at the time of its greatest power the Roman empire may be regarded as consisting of a network of municipalities. In Ireland a similar policy was pursued by the Anglo-Norman government. The

chief Irish towns in existence at the period of the invasion of Ireland in the reign of Henry II., towns situated generally on the sea coast or in communication with the sea, fell into the hands of the Anglo-Norman invaders. The government of these towns was remodelled, the chartered borough of England serving as an exemplar. New towns were established throughout the tribal lands which were conquered, they in turn receiving a similar form of government. Settlers were induced to come across from England by the grant of various privileges to those who should take up their abode in Ireland. In this way many towns sprang up around the castles of Norman nobles throughout the land.

The chief privilege conferred upon the inhabitants of Irish towns, old and new, was that of self-government. They were empowered to elect their own officers and councils, establish their own courts, and appoint their own magistrates. They were given the complete control of industry within their towns, while without they enjoyed important commercial privileges.

Thus there was established in Ireland a system of municipal government similar to that obtaining in the western part of the continent of Europe.

In all cases the various rights and privileges conferred depended upon a charter or charters. These charters were granted by English Kings or Norman nobles. When Henry II. parcelled out the greater part of Ireland amongst a few of his chief followers he exempted from the grants a number of the existing Irish towns with the territory adjoining them, retaining them in his own hands as royal boroughs. Dublin, Waterford, Cork and Limerick were amongst other towns excluded from the grants made to his barons. Three of these cities trace their powers back to charters granted by Henry or his son John, who was made Lord of Ireland by his father. Other towns, especially those newly founded, received charters from the Norman barons, charters which were confirmed later by English kings.

From a study of the charters granted to

Irish towns we are enabled to deduce the main features of their constitution and economic system. The land upon which the town was built, together with a considerable stretch of the adjacent territory was conferred by charter upon the citizens or burgesses. In the royal charters the land was always conferred in fee farm to be held for ever by the citizens or burgesses from the king and his heirs and successors, subject to an annual rent. The fee farm rent of Dublin was fixed by King John at two hundred marks a year, that of Limerick at forty pounds a year. Over the territory granted the citizens had complete control. The precious right of self-government was conferred upon the citizens thus endowed. They were allowed to manage their own affairs free from interference on the part of King or noble.

With regard to the constitution of the civic government of the newly enfranchised communities, it appears from the earliest charters that the townsmen were left free to set up whatever form of government they thought best. It is to be noted that

whatever rights and privileges were granted were conferred upon the whole body of citizens or burgesses and not upon a select few.

The Chief Officer.

The earliest charters are practically unanimous in declaring that the chief office in the civic constitution should be held by a single individual, who was to be elected by his fellow citizens. In Dublin the chief magistrate of the city was at first designated "Provost," a title which was soon to give place to that of "Mayor." In a charter granted by King Henry III. in the year 1229 permission was granted to the citizens of Dublin, and their heirs, to elect from among themselves annually a loyal and discreet Mayor, proper for the government of the city, and who on his election should swear fealty to the king, or in his absence, to his Justiciary. The Mayor was to hold office for one year, at the expiration of which time the citizens were empowered to retain him in office or elect another citizen in his place.

The title of the chief officer underwent changes from time to time. The earliest titles were usually those of "Provost" and "Mayor." The borough of Drogheda *versus* Midiam had under its charter, dated 1247, a chief magistrate known as "Seneschal." The titles were evidently borrowed from the constitutions of the French *communes* of the period, many of which *communes* were situated in domains ruled over by the King of England. In later years we find the titles of "Portreeve" and "Sovereign" in use. Whatever the title, the chief officer seems to have been endowed with a position of great power and dignity. As the chief representative of the town he was mentioned first in charters, royal grants and letters patent. He was the chief magistrate in the civic courts. He possessed large powers of jurisdiction over the citizens in the conduct of civic affairs and in the control of industry. If civic liberties were violated it was his duty to vindicate them. In times of danger he took his place at the head of the armed force of the town for purposes of offence

or defence. His power, however, was not absolute. Elected by the votes of his fellow citizens, and holding office for the brief space of a year, it was unlikely that he would run counter to the wishes of the majority of the electorate. He was advised and assisted in the duties of his office by a body of councillors. In certain of the civic constitutions provision was made for controlling the chief officer in the exercise of the powers of his high office. In the charter of the borough of Drogheda *versus* Uriel, dated 1229, it was provided that two of the more lawful and discreet men of the borough should be elected by the common council of the burgesses, before the King's justices, when they should come to the town to take the assizes, to keep the pleas of the Crown, and to see that the provosts of the borough justly and lawfully treated as well the poor as the rich of the borough. A similar provision occurs in a charter granted by Richard II. to the burgesses of Dundalk.

A charter to the burgesses of Drogheda *versus* Uriel of the year 1331 which granted

to them, in the absence of the King, the assize of bread and beer, and the custody and assay of measures and weights and other things whatsoever to the office pertaining within the borough, prescribed that the mayor and bailiffs should be fined, and amerced if they neglected their duty in respect of these matters.

About the year 1341 the Mayor and Bailiffs of Dublin were arraigned before the King's Justiciary for default in executing justice within the city. They were acquitted, however, on pleading the King's pardon for all trespasses and felonies committed before the 21st day of August, 1340, a date subsequent to the default for which they were arraigned.

The Bailiffs.

Next in point of rank and importance came the bailiffs, a title appearing frequently in the early charters. The office of bailiff was always a dual one, the title never being used in the singular. The bailiffs were important executive officers

in judicial matters. They likewise acted as magistrates in the civic courts. In a charter granted to the burgesses of Youghal in the second year of Richard III.'s reign which gave to the mayor and bailiffs the cognizance of all pleas, both personal and real, in a Court to be held on every Friday, it was provided that any one of these officers should have jurisdiction in the absence of the others. In the " Chain Book " of Dublin, under the heading of " Laws and usages of the City of Dublin " we find that the Bailiffs of the City intervened in the following matters :— Refusal of owners to receive rents as tendered, disputes between masters and apprentices, claims of country people for repayment from persons in the city, and distraints on goods of villeins. In Dublin the bailiffs also executed the office of coroner.

The title of bailiff continued in use for about four hundred years. In the time of James I. the title of " sheriff " was substituted for it in the charters issued by that monarch. The latter title was used, how-

ever, much earlier. In the year 1412 the title of "bailiff" was abolished in Drogheda, and that of "sheriff" substituted. In a charter granted to this town in the year 1363 it was provided that the mayor and bailiffs in the guildhall (gihald) of the borough, should have cognizance of all pleas as well of tenures within the borough and suburbs, as of all trespasses and contracts happening there, and executions thereof, except ordinances of the staple. That the bailiffs shared with the mayor or other chief officer in the government of the town seems a fair inference from the fact that when the office was abolished in Drogheda on the occasion of the union of the two boroughs on opposite sides of the Boyne in the year 1412, the new charter stated that the united borough should in future be governed by one mayor and two sheriffs only, the names and states of the seneschal and bailiffs being extinguished. As in the case of the mayor or provost, the bailiffs or sheriffs were annually elected by the citizens and burgesses of Irish cities and towns.

This charter conferred upon the mayor of Drogheda a certain amount of control over the sheriffs. It provided that the mayor should have jurisdiction of hearing, correcting, reforming, and determining in the hall of the Guildhall at the suit of any, all defects, oppressions, extortions, misprisions, ignorances, negligences and injuries committed by the Sheriffs in their office within the county (of the Town of Drogheda).

Powers of the Citizens or Burgesses.

As already mentioned, the rights and privileges granted by the charters were conferred upon the general body of citizens or burgesses. The charter of Prince John, Lord of Ireland, dated 1192, conferred the various rights and privileges therein mentioned upon the citizens of Dublin, both within and without the walls. In 1228 Henry III. granted a charter to " his good men of Drogheda." It is clear from the charters that certain important rights were vested in the general body of citizens or burgesses.

Thus the land which was the subject of the original grant became the common property of the citizens or burgesses and could be disposed of only by their common consent. The early records of Dublin contain numerous instances of grants and leases made by the common consent of the citizens. Henry III.'s charter to his citizens of Waterford, dated 1232, granted to them all tenures within the walls and without to dispose thereof according to their will, by the common assent of the city. Other charters contain similar clauses.

The power of electing the chief officer was likewise vested in the general body of citizens or burgesses. Thus the citizens of Limerick in a charter, dated 1291, stated to be for the purpose of removing any ambiguity as to the terms of an earlier charter of John, Lord of Ireland, granted explicitly that the citizens of Limerick should have power to choose a mayor of themselves annually for the government of the city. The grant of the power of electing the chief officer is a common feature of the charters.

The most important right possessed by the citizens or burgesses under these charters was that of making laws and ordinances for the good government of their city or town. The charter of Drogheda, dated 1412, empowered the mayor, sheriffs, burgesses and commonalty to meet every year and make ordinances and statutes for the safe government of the town. A charter of Limerick, dated the following year, granted to the mayor and commonalty of that city the power of meeting and making ordinances and statutes for the advantage of the city. In both these charters, it is to be noted, the commonalty were empowered to take part in civic legislation.

We are afforded a clue as to the manner in which the citizens or burgesses exercised these important rights of granting public land, electing mayors and bailiffs, and making ordinances for the good government of the city or town by another institution of which frequent mention is made in the charters, namely, the "Hundred Court." Every chartered town was granted

its own court. The term "Hundred Court" was borrowed from the English borough wherein that institution had existed from early Saxon times and had continued on when civic government in England had been transformed under Norman influence. In the Hundred Court of the English borough all the burgesses had the right of being present. The functions performed therein included the election of officers, the making of bye-laws, and the sanctioning of grants of public land. From the analogy of the Hundred Court of the English borough we are led to the conclusion that the citizens and burgesses of Irish cities and towns exercised the important rights above mentioned in the civic courts.

So far we have carefully refrained from using the term "inhabitants" when describing the body in whom these powers were vested. Did the terms "citizens" and "burgesses" include all the inhabitants, or at least the adult male inhabitants of Irish cities and towns? The question, it seems, must be answered in the negative.

Dr. Stubbs, in dealing with the history of the English borough, describes for us the members of the Hundred Court. They were, he says, the owners of land, the owners of houses, shops or gardens ; the burgage tenants, from whose burgages the rent (that is, the " ferm " of the town) was originally due. In Ireland it would seem from the evidence available that the terms " citizens " and " burgesses " were commensurate with " freemen " and that the body of freemen consisted at first of those, and those only, who held burgages in the town.

Individual charters throw some light upon the subject. In the earliest charter on record relating to the borough of Carlow, namely, that granted by William Marshall, Earl of Pembroke, in the year 1296, the Earl granted to his burgesses of Carlow " all such liberties as burgesses ought to have, and as it was lawful for him to confer " and to have the power of making " such of their tenants free as held tenements of 20 feet of land, and that they might enjoy the common liberty with the

burgesses." A still earlier charter contains a similar provision. It was a charter granted by William, Earl Marshal, son-in-law of Strongbow, to his burgesses of Kilkenny and attributed to the year 1223. In this charter it was granted that the burgesses might make their tenants free, by 20 feet of land, so that they should have common liberty with the burgesses.

The body of freemen—the inhabitants in possession of full civic rights—did not, however, continue to be restricted to those holding burgage tenures. As population and commercial prosperity increased, it was doubtless felt necessary to enlarge the civic body. We accordingly read of new rights to freedom being admitted. Sons of freemen were admitted by right of birth. Sons-in-law of freemen were admitted by right of marriage. Apprentices to freemen on completing their time were admitted by right of servitude or apprenticeship. In a statute made in 15 & 16 Edward IV. mention is made of "freemen of the city of Waterford, by birth or apprenticeship." In a later statute of 15

Henry VII. the three rights mentioned are recognised as existing in Dublin, Waterford and Drogheda.

The Common Council.

The early charters leave it doubtful as to the manner in which the civic government was organised. Mention is made of Common Councils, but no indication as to the qualification for membership is given, nor is it certain whether the Councils were restricted to a small number of privileged individuals or were open to all the freemen of the cities and towns.

It is highly improbable that the actual work of government in any of our Irish towns, even the smallest, was participated in by the whole body of free burgesses. In a paper contributed by Mr. W. F. Butler, author of "The Lombard Communes" to the Journal of the Cork Historical and Archaeological Society, a valuable contribution is made to this phase of the subject. He tells us that as a result of the growing prosperity of Irish towns due to their

lucrative continental trade, there arose in many of them a kind of civic aristocracy, into whose hands there gradually passed complete control of municipal affairs. From a perusal of the list of mayors and sheriffs of Irish towns it appears that these offices were at first held by a wide circle of families, but that the circle gradually narrowed until control passed into the hands of small oligarchies composed of a few powerful city families. The most notable instance was that of the "tribes of Galway," the name applied to a group of fourteen families who ruled the city for a period of nearly two hundred and fifty years. In Kilkenny, Mr. Butler tells us, a group of ten families held sway. In Limerick, Waterford and Cork oligarchic rule also prevailed. In the last mentioned place the Danish element gradually rose into pre-eminence, and for a long period swayed the civic councils.

In Kilkenny a small inner council was by charter granted the power of making laws and ordinances binding upon their fellow citizens. By a charter of the tenth year of Henry VII.'s reign it was declared

that the sovereign, provost, and burgesses of Kilkenny might hold councils, convocations, and common assemblies in the Guildhall or Tholsel, except the common assemblies, four times in the year, of the commons, there usual, and that with the sovereign, provost, and their peers, in all such councils and convocations there be only sixteen of the more discreet burgesses to be elected by the sovereign, provosts and their peers; and that acts and ordinances made by them, should have the same force as those made by the common assent of all the commons in the Tholsel.

The municipal records of Dublin reveal the fact that the government of that city was vested in a Council which was remarkable for its symmetrical composition. It consisted of a mayor, two bailiffs or sheriffs, twenty-four jurats or jures, forty-eight demi-jures and ninety-six councillors. The two latter elements are frequently referred to as "The Numbers." They were also known as "The Forty-eight" and "The Ninety-six." Like the Irish Parliament, the Common Council was composed of two

Houses, an " Upper House " and a " Lower House." The Mayor and Jures sat together in the " Upper House " ; the demi-jures and the " Ninety-six " sat together in the "Lower House" which was presided over by the Bailiffs or Sheriffs, who probably alternated in the presidency. For several centuries, the constitution of the Common Council of Dublin remained as above described, the titles alone having changed. The Mayor became the " Lord Mayor." The " Bailiffs " became " Sheriffs." The title of " jure " gave place to that of " Alderman " and that of " demi-jure " to " Sheriff's Peer." The Sheriff's Peers and the Ninety-six Councillors are referred to as the " Commons " of the city. It is interesting to note that the " Commons " consisted largely of guild representatives. In a document of the seventeenth century it is stated that the Ninety-six Councillors were elected into the Common Council out of several of the Guilds or Corporations of the city. This peculiar constitution was perpetuated down to the year 1840.

CHAPTER II.

The Hundred Court.

An important feature common to the constitutions of Irish chartered towns was that known as the Hundred Court. In countries like France and England where the feudal *regime* reigned supreme the privilege of being freed from the jurisdiction of the court of the feudal lord was highly valued. The inhabitants of the towns of France reckoned not the cost in blood or money in their struggle to secure that precious right. In England it was purchased with the wealth of the burghers. In Ireland it was a free gift, granted with a view to encouraging Englishmen and others to settle in Irish towns. Yet in semi-feudalised Ireland the privilege was none the less valuable. It was one of the most cherished rights of the civic constitution.

The charters of Irish towns are a fruitful source of information concerning the

Hundred Court. The charter of Prince John to the citizens of Dublin in the year 1192 conferred the following privileges amongst others upon the citizens, namely: that no citizen of Dublin should plead beyond the walls of the city in any plea, except pleas of extern tenements not appertaining to the Hundred of the city, that no citizen should wage battle in the city on any appeal brought against him, but should clear himself by the oath of forty lawful men of the city, that no citizen should be amerced in money unless according to the law of the Hundred, and that the Hundred Court should be held only once in the week. In another charter granted by King John in the last year of his reign the citizens were confirmed in the foregoing liberties, with reservation to the king of the pleas of the Crown. In the charter granted to the burgesses of Drogheda *versus* Uriel by Henry III. in the year 1229 it was provided that the Hundred (Court) should be held once within fifteen days, that no burgess of Drogheda should plead without the Hundred of the borough of

any plea, except pleas of external tenures, that pleas should be held at Drogheda of all debts contracted by the burgesses at Drogheda and of bail given there, that the burgesses might distrain their debtors by their pledges in Drogheda, that no burgess of Drogheda should be amerced of money in the Hundred, unless according to their ancient custom, namely, of twelve pence. Somewhat similar provisions occur in other early charters.

The clause forbidding citizens or burgesses to plead without the walls of the city or without the Hundred of the borough appearing in the charters quoted was aimed at preventing interference in the administration of justice on the part of neighbouring feudal lords. Such interference was often attempted and was bitterly resented. In the records of Dublin frequent mention is made of attempts made to remove causes from the jurisdiction of the Hundred Court. In the year 1266 a precept was issued by Prince Edward, afterwards Edward I., to the Mayor and Bailiffs of Dublin authorising them to prevent encroachments

within his dominion, in the execution of ecclesiastical sentences under which his men were publicly beaten through the streets and ways. The precept complained that the ecclesiastics did not permit the decrees of the Prince's Court to be carried out within church territory in Dublin. Another precept of the same year to the Archbishops and Bishops strictly prohibited legal proceedings against the citizens of Dublin in ecclesiastical courts, unless in matrimonial or testamentary causes. The Archbishop of Dublin was not the only one who sought to interfere in the administration of justice in Dublin. In the year 1319 the Mayor and citizens successfully maintained the right of the citizens to have cases tried in their own court, and to be exempt from pleading elsewhere, unless in pleas connected with extern tenements. This assertion of civic rights arose out of an attempt upon the part of Edmund Le Botiller to have a suit for the recovery of land in Le Rath, near Donnybrook, determined outside of the Hundred Court.

The charter granted to the burgesses of

Drogheda *versus* Uriel in the year 1253 provided that no sheriffs or ministers should intermeddle in attachments or summonses within the borough, except the provosts and coroners of the borough. It further provided that if any burgess were attached without the borough the mayor and burgesses should have of him their court and give justice to the complainant. The burgesses of this same borough were further confirmed in their liberties by a charter of Edward II. of the year 1319 which ordained that they should not be disturbed by the King's Justiciary, Roger de Mortimer, in the privileges of their Hundred under former charters and confirmations. Thus were the inhabitants of Irish towns secured in the enjoyment of their own courts, where the law of the Hundred was administered by their own duly elected magistrates.

The jurisdiction of the Hundred Court was very extensive and in course of time increased as new powers were added to those enjoyed by the civic magistrates. King John in his charter to

the citizens of Dublin reserved to the King the pleas of the Crown. The excluded pleas are specifically mentioned in a charter granted by Edward III. to the citizens of Dublin in the year 1363. By this charter it was granted that officials of the king should not enter the city or suburbs to execute any process, unless in default of the mayor and bailiffs, except in relation to the four pleas, namely, rape, arson, forestalling and treasure trove, which the king retained entirely to himself and his ministers. In the year 1419 in consideration of the good services, exertions, expenses and losses of the Mayor and commonalty of Dublin in connection with the preservation and defence of the loyal subjects in that city the offices of Justice of the Peace and Justice of Labourers were conferred upon the Mayor and Bailiffs of Dublin. Under the powers thus conferred the Mayor and Bailiffs had cognizance and entire correction of all labourers, artificers, and victuallers dwelling in or passing through the city, with power to adjudicate on every matter appertaining

to the said offices. Still greater powers were conferred in the year 1485 by Richard III. who granted that the Mayor and Recorder of Dublin for the time being should be Justices of Oyer and Terminer within the City, suburbs and franchises on land, sea and fresh water and that they should be also Justices for gaol delivery. The importance of the powers conferred by this charter is evidenced by a note in the "Liber Albus" of Dublin in which this charter is enrolled. The note runs as follows: "Heare a most beneficiall charter to Dublin, grauntinge therby to the Mayor and Recorder full power to hyre and determyne all cawses, viz., all felonies, trespasses, conspiracies, rebellions, misprisions, contemptes, forfeitures, concealementes and other cawses by themselves within the cittie, and by no other justices eales, and the juries in this behalfe to be of the cittizens, and of no others eales. Note also that by this charter the Maior and Recorder hathe power of gaile delivere within Dublin, and no other justices eales."

The extensive jurisdiction enjoyed by

the chief magistrates of Dublin was not peculiar to them alone. The charter of Edward III to Drogheda *versus* Uriel in the year 1363 granted that the mayor and bailiffs in the "gihald" of the borough should have cognizance of all pleas as well of tenures within the borough and suburbs, as of all trespasses and contracts happening there, and executions thereof, except ordinances of the staple. The mayor and recorder of the united borough of Drogheda were later appointed justices of the peace and justices of gaol delivery. The power to hold inquisitions of felonies and other crimes was specially mentioned. The charter of 3 Henry VII. to Waterford granted that the mayor and bailiffs should be justices for gaol delivery, to hear and determine all causes of treason, murder, robbery, felony, arson, and other crimes, and to inflict execution as well for life as limb, the king's justices not to interfere in such cases. These were extraordinary powers conferred upon the magistrates of a civic court, including, as they do, one of the pleas usually reserved elsewhere,

that of arson. The charter expressly forbade the interference of the King's justices in such cases. We have already mentioned the charter to Drogheda *versus* Uriel forbidding the King's Justiciary, Roger de Mortimer, to disturb the burgesses in the privileges of their Hundred.

The reserved pleas were held and determined by the King's judges under their commissions. It is noteworthy that in Limerick, where felonies were reserved, it was ordained by a charter of the year 1413 that the mayor should be included in a commission to any other person to determine such.

Trial by jury was the rule in the Hundred Court and was specially provided for by the charters. In the charter of Prince John to the citizens of Dublin in the year 1192 it was ordained that no citizen should wage battle in the city on any appeal brought against him, but should clear himself by the oath of forty lawful men of the city. Trial by battle was one of the peculiar incidents of the feudal system. Fortunately for the peace of the city and

for the cause of justice that method of settling disputes was forbidden, its place being taken by the method of compurgation, the forerunner of the jury system. In the year 1334 Edward III. granted to the mayor and citizens of Dublin that they should not be impanelled on juries for recognitions or inquests in relation to extern lands, tenements, trespasses, contracts or extern affairs, before the King's justices or ministers within the city. Externs were not to be impanelled with citizens on juries for recognitions, or inquisitions concerning lands or tenements in the city, or of trespasses, contracts, or other internal affairs, unless concerning the Crown or commonalty of the city. The mayor and citizens were to be tried only by their fellow-citizens, except in cases concerning the Crown or commonalty of the city. In the charter of Edward III. to Drogheda *versus* Uriel in the year 1331 it was provided that strangers should not be put with the burgesses on assizes, juries or inquests, by reason of lands and tenements within the borough, or of trespasses or contracts

within, unless it touched the King or the commonalty of the borough; and that they and their heirs and successors upon injuries, felonies, pleas and demands within, should not be convicted by strangers, but only by their co-burgesses. A similar provision is contained in the charter of the same year to the borough on the other side of the Boyne.

To enforce the appearance of an offending party before the mayor and bailiffs his body and goods might be attached. The payment of debts was enforced by distraint of goods. In Prince John's charter to the citizens of Dublin in the year 1192 it was provided that the citizens might distrain their debtors by their chattels in Dublin. In an agreement made between the Archbishop of Dublin and the citizens in the year 1224 it was provided that the citizens should not distrain or attach any person in the houses of the clerics unless for theft or homicide. The citizens of Limerick were empowered by their charter, dated 1291, to distrain their debtors by their chattels in Limerick. A charter of the year

1413 gave the mayor and bailiffs of that city cognizance of all pleas, real and personal, assize of novel disseisin, *mort d'ancestre* and others with power to arrest and attach by body and goods within the city for all contracts and trespasses within the city and liberties, and according to law to imprison, punish, or discharge the defendants.

The profits arising from the administration of justice formed an important part of the civic revenue. In those days conviction of felony resulted in the forfeiture of a man's goods. The charter to Drogheda of the year 1412 granted that the burgesses and commonalty should have all fines, issues, forfeitures and amercements pertaining to the justiciary of the peace within the county, for supporting and repairing the bridges of the town and other burthens daily arising; and forfeitures of victuals, viz., bread, wine, ale and other things not pertaining to merchandise. They were likewise to have the goods of felons and fugitives, escapes and other forfeitures of chattels, in aid of the sustaining of the fee

farm then fixed at one hundred marks. The citizens of Limerick, by their charter dated 1413, were granted the profits of all pleas, fines, amercements and issues to justices of the peace belonging, chattels of fugitives and felons, waifs, strays, and forfeitures of bread and other victuals. Fines were limited in amount by certain of the charters. Thus it was provided by the charter to the citizens of Dublin in the year 1192 that no citizen should be amerced in money unless according to the law of the Hundred, that is to say, by forfeiture of forty shillings, so that he who was amerced should be quit of a moiety, and should pay the other moiety as amercement, excepting three amercements, namely, those of bread, ale and watch, which were amercements of two shillings and six pence, one moiety of which should be condonable, and the other paid as amercement. The "Chain Book" of Dublin contains a tariff of fines for various offences. The inhabitants of Drogheda *versus* Uriel were subject to much lighter fines than those of Dublin. Their charter of the year 1229 prescribed that no

burgess of Drogheda should be amerced of money in the Hundred, unless according to their ancient custom, namely, of twelve pence.

Prisoners were confined in the town gaol, of which mention is made in several charters. The charter of Richard III. to the citizens of Dublin granted that the mayor, bailiffs, commonalty and citizens should have charge of the King's gaol within the city, suburbs and franchises, with the custody of all felons and malefactors. Henry VII.'s charter to Waterford granted that the mayor, bailiffs and citizens should have a gallows and a prison within the city, with power to commit traitors, felons and other malefactors. The mention of the gallows points to the fact that capital punishment was inflicted for certain crimes. An earlier charter granted to the same citizens conferred power upon the mayor and commons to array all persons of every description, and to march against the disturbers of the peace and enemies, with banners displayed, and to put to death rebels,

felons, traitors and those who supply the enemy with provisions.

Besides the Hundred Court there also existed a bailiff's or sheriff's court, the nature of which is not defined by the early charters. Mention is made of this Court in the charter granted to the united borough of Drogheda by Henry IV. in the year 1412. Under this charter the sheriffs were empowered to act as any other sheriffs and to hold their county on Mondays from month to month, and their court as often as it pleased them, as the bailiffs, on each side, had before done.

CHAPTER III.

Civic Revenue and Expenditure.

The civic revenue was derived from a variety of sources. Contrary to the modern practice, very little of it arose from direct taxation. The chief sources of revenue were tolls and customs, the profits arising from the administration of justice before mentioned, corporate property, the burgage holdings of the inhabitants, assizes of bread and ale, assay of weights and measures, and in rare cases tallages imposed upon the inhabitants.

Tolls and customs were levied under the authority of charters, royal grants or licences. They were usually granted for particular purposes and for limited periods. Thus Henry III., in the year 1221, granted permission to his good men of Dublin, in aid of enclosing that city, and for the security and protection of it, as well as of the adjacent parts, to levy tolls on certain specified articles brought to the city for

sale. This permission was to continue only during the King's minority. In the year 1228 the same monarch granted a charter to "his good men of Drogheda" under which they were empowered to levy certain customs in aid of the making of the bridge of Drogheda. The citizens of Waterford were granted permission by Edward II. in the year 1310 to levy certain customs during a period of seven years in aid of the walling of the town. The burgesses of Drogheda *versus* Uriel were granted permission by Henry IV., in the year 1404, to levy customs and tolls in aid of enclosing and paving the town, and repairing and sustaining the towers, quay and bridge. The distinction between tolls and customs was that the former were charges levied on goods arriving by land, the latter were charges levied on goods arriving by sea.

The levying of tolls and customs without authority rendered civic officers liable to severe penalties. The Dublin records contain an entry under the year 1317 in which it is stated that Roger de Mortimer, Lieutenant in Ireland for Edward II.,

granted pardon to the mayor and bailiffs for having, without the King's license, levied a toll of four pence on every crannoc of corn brought to the city.

The revenue of a town arising from this source was greatly increased when the burgesses enjoyed the privilege of holding an annual fair or a weekly market. Markets and fairs could only be held by permission of the King or feudal lord. One of the privileges conferred by King John on the citizens of Dublin was that of holding an annual fair, with all the liberties and free customs appertaining to such a fair. It was to commence on the vigil of the festival of the Finding of the Holy Cross, and to continue during the fifteen following days. This privilege, or rather the profits arising from the fair, had to be shared with the Archbishop of Dublin, to whom the charter reserved the fair during two days, namely, the vigil of the festival and the festival itself. Permission to hold an annual fair lasting seven days and a market on every Wednesday was granted to the burgesses of Drogheda *versus* Midiam

by a charter of Henry III. in the year 1247.

Whilst dealing with the subject of tolls and customs it may be mentioned that freedom from these payments was a privilege frequently mentioned in charters. Henry II. granted to his burgesses of Dublin freedom from toll, passage, pontage, lestage, pavage, murage, quayage, carriage, and all custom for themselves and their goods, throughout his entire land of England, Normandy, Wales and Ireland. Infringement of the charter was prohibited under penalty of ten pounds. This was a valuable privilege in times when tolls and customs were both numerous and burdensome. The citizens of Cork, Limerick, Waterford and other places were similarly privileged. The feudal barons granted a similar privilege to the towns established on their domains, but it was circumscribed by narrower limits. Thus the Earl of Pembroke exempted his burgesses of Carlow from toll, lastage, passage, pontage, and all other customs throughout his whole land, except the towns of Pembroke and Wexford.

This right to free trade was often infringed. The records of Dublin contain an entry stating that Brother William Tany, Prior of the Hospital of St. John of Jerusalem in Ireland, renounced all right thenceforth (A.D. 1381) to take customs of merchants or merchandise of any kind passing, remaining, or standing in the water of Auenlyf within the boundaries of the franchises of the city. Another entry of the same year records the submission of Henry Kent, and the application by him for pardon of the court of the city for having exacted customs from divers men in the water of Auenlyf near Clontarf, within the city boundaries.

Corporate property provided another source of revenue. Mention has already been made of the fact that the burgesses of Irish towns were endowed by their charters with a more or less considerable stretch of territory adjacent to the town walls. Portions of this territory were alienated in perpetuity or leased for terms of years to individual burgesses or to religious communities, before the Mortmain

Act restricted alienation of lands to the latter. The revenue arising from these grants helped to fill the civic coffers. In the Dublin records we read that such grants were made in the full Hundred Court before all the commonalty. The common assent of the citizens was necessary to sanction the disposal of public lands. For their burgage holdings within the city walls small annual payments were made by the citizens.

Tallages or levies were also imposed at times. In the year 1363 King Edward III. granted that foreign merchants coming with their wares for sale to Dublin, Waterford, and Drogheda should pay, along with the citizens, aid and contribution to the tallages and other burthens of the said cities. Under the provisions of the Staple Act they had hitherto bought and sold freely in these places. In the year 1427, Henry VI. granted that the sum of twenty pounds per annum should be deducted from the Crown rent of Dublin during the ensuing twenty years. The grant was stated to be made in consequence of representations

made by the mayor, bailiffs and commons of the city that owing to pestilence, incursions by Irish enemies and divers heavy burthens in the time of the King and his progenitors the citizens were unable to pay the rent to the Crown without imposing tallage on the commonalty. It would seem, therefore, that these tallages were extraordinary payments.

Further revenue was derived from the assize of bread and ale, and the custody and assay of measures and weights. In a charter granted to the burgesses of Drogheda *versus* Uriel by Edward III. in the year 1331 it was declared that the profits of the assize and assay should belong to the burgesses in aid of the fee farm of the town. In the year 1334 the mayor and citizens of Dublin were granted the assize of bread and ale and the custody and assay of measures and weights.

Civic Expenditure.

From the civic revenue we pass to a consideration of the civic expenditure, some

of the items of which have been already indicated. The fee farm rent was a fixed item of expenditure and could only be altered by royal consent. As a matter of royal favour portion of the fee farm rent was sometimes remitted in times of stress, or as a reward for services rendered. Thus in the year 1316 Edward II. remitted the rent payable by the citizens of Dublin to the Crown, to the extent of sixty pounds per annum during the ensuing four years, in consideration of losses entailed on the citizens by concourse of armed men marching towards Ulster against the Scots; the destruction of the greater part of the suburbs of the city; and the decrease of revenue.

The defence of the towns against "Irish enemies" and "English rebels" necessitated a considerable expenditure. In the middle ages every Irish town of any importance was surrounded by strong walls, pierced here and there with great gates, and fortified with towers overlooking the neighbouring country. The upkeep of the walls and gates and towers involved a

constant drain upon the civic purse. The proceeds of the tolls and customs which the citizens were permitted to levy were often specifically allocated by charter for this purpose. Murage grants are of frequent occurrence in the records of Irish towns.

To render aid in the defence of one's town was an important civic duty. Military service on the part of the inhabitants of Irish cities and towns seems to have been obligatory. In a charter granted by Henry VI. to Waterford the King conferred power upon the mayor and commons to array all persons of every description, and to march against the disturbers of the peace and enemies, with banners displayed, and to put to death rebels, felons, and traitors, and all those who supply the enemy with provisions. During the period of the invasion of Ireland by Edward Bruce (A.D. 1316-1318) the common folk of Dublin presented a statement of their grievances to the mayor, bailiffs and commonalty with a petition that certain recommendations therein mentioned should be

adopted. Amongst the latter they petitioned that under penalty of grievous amercement at least one man should come to muster from every house at the tolling of the public bell by day or night while the land should be troubled by the Scotch enemies, and by the hostile Irish who daily threatened to burn the suburb and to do all possible damage to the city. And again that in the four quarters of the city on Wednesdays and Thursdays weekly, after dinner, one man at least should come from each house for public works, that meanwhile all the shops should be closed, and that those who during that time sold goods contrary to this order should be fined, and the amount applied to the public works of the city. The fortification of the city was the most important of the public works. No payment appears to have been made for such services, they being regarded as part of the civic duty of the inhabitants. When, however, a hosting or journey had to be made beyond the city walls, the expenses were paid. Several items relating to such expenditure occur in the Dublin records.

At a meeting of the Dublin City Assembly held on the fourth Friday after Michaelmas in the year 1454, it was ordained that no apprentice of a merchant should be admitted to the franchise of the city until he should have a "jake bowe," sheaf, "sallet" (light helmet), and a sword of his own; and that all apprentices of other crafts should have a bow, arrows, and sword. Thus did the City Fathers impress upon the newly enrolled citizen the necessity of being ever ready to take his share according to his ability in the defence of the city.

Amongst other public works necessitating expenditure were the paving of the streets and the erection and maintenance of public buildings and bridges. The expenses were usually defrayed by the proceeds of tolls and customs. Thus in the year 1404 King Henry IV. conferred a charter upon the burgesses of Drogheda *versus* Uriel granting certain customs and tolls in aid of enclosing and paving the town, and repairing and sustaining the towers, quay, and bridge.

The expenses of the watch or police system was another item of expenditure.

It is mentioned in the statement of grievances of the common folk of Dublin already mentioned. Therein it was petitioned that the expenses of the watch should be contributed to both by rich and poor.

Civic officers and servants were another charge upon the public purse. Amongst the officers mentioned in the mediæval records are the mayor or other chief officer, the bailiffs or sheriffs, the recorder, coroner, the clerk of the city, the treasurer, the sword-bearer and the water bailiffs, while a host of others must have been engaged in connection with the markets and the collection of the tolls and customs. Amongst the laws and usages of the City of Dublin mentioned in the "Chain Book" it is recorded that the commonalty should have their clerk, at the payment of five marks annually and legal perquisites, that each sergeant should have half a mark as yearly fee, and the mayor of Dublin the modest sum of ten pounds a year.

Provisions were contained in some of the charters and grants that the moneys arising

from the grants should be expended only upon the purposes for which they were conferred, and that the acounts should be audited. Thus in the year 1336 John Darcy, Justiciary in Ireland for Edward III., granted to the mayor, bailiffs and citizens of Dublin certain customs for a period of ten years, the moneys arising therefrom to be expended exclusively upon the Tholsel and the completion of the paving of the city. In a grant made by Richard II. to the citizens of Dublin, dated January 9th, 1385, it is stated that great inconvenience and damage had been caused to the citizens of Dublin, and other liege subjects, by the fall and breaking down of the great bridge of that city. To aid towards its repair, the King granted to the mayor, bailiffs and citizens for four years ensuing, the city ferry over the Liffey, with permission to take the following tolls: of every man and woman, one farthing; of every ox, cow, horse, mare, and horse-load valued at twelve pence, also of every ox-carcase, one half-penny; of every load of less value, and of every pig, sheep,

or carcase thereof, one farthing; of all other goods ferried, a reasonable toll in proportion to quantity and value, according to the discretion of the mayor and bailiffs. The issues and receipts of the ferry tolls and customs, beyond the reasonable outlay, were to be applied towards the repair and construction of the bridge, under the supervision of the Abbot of the House of the Blessed Virgin Mary, near Dublin, and six others named. Annual accounts were to be rendered at the King's Exchequer in Ireland. In a charter granted by Henry VI. to the burgesses of Drogheda in the year 1442, twenty marks annually were allotted out of the fee farm rent of the town towards the expenses of the town walls. This charter was afterwards confirmed by an Act of Parliament in the thirty-seventh year of Henry's reign with the direction that the money should be applied to the repairs of the Tholsel and bridge as well as the walls and that an account should be rendered annually before four men of the town, elected annually by the burgesses of the town in their common assembly.

Civic auditors were appointed annually in Dublin for the auditing of the municipal accounts.

CHAPTER IV.

Control of Trade and Industry.

In the economic sphere Irish citizens and burgesses exercised important powers under their civic constitutions. Control of trade and industry was exercised either through the medium of the merchant and craft guilds which they were permitted to establish by their charters or directly by the common councils. Prince John in the year 1192 granted to the citizens of Dublin that they should have all their reasonable guilds as the burgesses of Bristol had. The " Red Book " of Bristol records that a free guild of merchants had existed in that town, from time beyond the memory of man, and that the said guild was confirmed in its liberties by John, Earl of Moreton, afterwards King John. In the year 1229 the burgesses of Drogheda *versus* Uriel were granted by charter the right of having a guild merchant, with hanse and other liberties, and free customs to that

guild belonging, and that none, but those of the guild, should make merchandise in the borough, unless by the will of the burgesses. Limerick and Waterford were granted a privilege similar to that enjoyed by Dublin, namely, that they should have all reasonable guilds as the burgesses of Bristol had. Gross, in his history of the Guild Merchant, mentions fifteen Irish cities and boroughs wherein a guild merchant existed during the mediaeval period. The guild merchant was the most important of all the guilds.

The townsmen were secured in the enjoyment of the profits of trade by various restrictions imposed upon merchant strangers. All merchants who were non-resident in a town were styled "strangers" or "foreigners." In the Dublin charter of the year 1192 it was provided that no foreign merchant should buy within the city corn, hides, or wool, from a foreigner, but only from the citizens; that no foreign merchant should have a wine tavern, unless on ship board; that no foreign merchant should sell cloth in the city by retail; and

that no foreign merchant should tarry in the city, with his wares for sale, beyond forty days. Similar provisions occur in the charters of Waterford, Drogheda, and other towns. During the great annual fairs which were held these provisions seem to have been relaxed and freedom of trade permitted.

The duty of seeing that correct weights and measures were used in the conduct of trade was cast upon the mayor and bailiffs or other corporate officers by the charters of Irish towns. Equally important to the inhabitants was the right of obtaining food and drink of pure quality. Bread and ale were the most important articles of diet in daily use. Accordingly, the charters provided for an assize of bread and beer. In other words the civic officers were empowered to examine the bread and beer offered for sale with a view to ensuring that the standard quality was maintained and that standard weights and measures were used. Penalties were imposed upon those who infringed in any of these respects. The antiquity of the

custom of stamping bread with the baker's name goes back to mediaeval times. One of the earliest ordinances of the Dublin City Assembly on record provided that bakers should not make bread unless stamped with their own names. Unstamped bread was to be forfeited and the bakers fined at the discretion of the Court. As an instance of the powers in these matters conferred upon the officers of Irish towns, we may cite the provision in the charter granted by Edward III. in the year 1331 to the burgesses of Drogheda *versus* Uriel whereby it was declared that the burgesses should have, in the absence of the King, the assize of bread and beer, and the custody and assay of measures and weights and other things whatsoever to the office pertaining within the borough, and that they should punish transgressors of the assize, and correct defects of measures and weights, and of other things to the said office of the market pertaining, so that the King's clerk of the market should not interfere, save to examine and correct the standard, and that the profits of the assize and assay should

belong to the burgesses in aid of the farm of the town, the mayor and bailiffs to be fined and amerced if they neglected their duty.

Important powers with regard to the fixing of rates of wages and the adjudicating upon disputes between masters and men were attached to the offices of justice of the peace and justice of labourers. These offices were conferred upon the chief magistrates of several Irish towns. In the year 1419 Richard Talbot, Archbishop of Dublin, Deputy of John Talbot, Lieutenant in Ireland for Henry V., granted that the Mayor and Bailiffs of Dublin for the time being should be Justices of the Peace and Justices of Labourers; that they should have cognizance and entire correction of all labourers, artificers, and victuallers dwelling in or passing through the city, and that they should have power to adjudicate on every matter appertaining to the said offices.

The records of the City of Dublin show that the Municipal Assembly exercised important powers with regard to the city food supply. Ordinances were made for the prevention of regrating and forestalling,

that is, for the prevention of a few men getting the control of the supply of corn and other important articles of food, and selling them at enhanced prices. The City Assembly likewise fixed rates of wages and the prices of articles of food. In addition it enforced good workmanship in articles manufactured within the city. The exercise of these powers by the City Assembly, powers usually associated with the merchant and craft guilds, shows that the latter bodies were subordinate in authority to the Assembly, even in matters so vitally concerning the interests of their members.

The Guilds.

An important part in the regulation of industry was played by the guilds. As already mentioned, the grant of the right to have merchant and other guilds was a common feature in the civic charters. At first all those who bought or sold goods whether of their own manufacture or otherwise seem to have been enrolled in the guild merchant. Thus in the Dublin Guild Merchant of the thirteenth century the

membership included those engaged in various arts and crafts as well as those who followed the art of merchandise.* As industry and commerce developed in the cities and towns of Ireland it was found more convenient to organise the different industries into distinct guilds under the control of their own officers. The essence of the guild system was its exclusiveness. No one outside the ranks of the guilds was allowed to engage in any art or craft, unless in very exceptional circumstances. Beyond the fact of the existence of guilds in numerous cities and towns of Ireland, we are unable to learn much of their organisation in the mediæval period elsewhere than in Dublin, the guild records of other towns not having been published.

The Dublin Municipal Records contain numerous references to the city guilds. They show that in that city the guild organisation had reached a high state of development and performed a useful function in the regulation of trade and industry

*See article entitled "The Guilds of Dublin" in the "Irish Monthly," August 1917.

therein. One feature which springs into prominence in connection with the Dublin guilds was their strict subordination to the City Assembly. While the City Fathers encouraged in every way the formation of guilds and the promotion of the welfare of the guildsmen they firmly insisted that the monopoly enjoyed by the guildsmen should not be used to the detriment of the common welfare. The use of fraudulent weights and measures, the charging of excessive prices, bad workmanship and other faults to which the guildsmen were liable were severely punished. Should the members of a guild prove obdurate the City Fathers had a powerful and unfailing weapon in their armoury—they could throw open any art or craft to strangers and non-guildsmen. On more than one occasion this was done in order to punish the Dublin guilds and preserve the common welfare. Disputes between the guilds in regard to their respective spheres of industry—a by no means uncommon occurrence—were submitted to and settled by the City Assembly.

CHAPTER V.

Relations with the Central Government.

From the picture of civic government here outlined it is clear that the towns of mediæval Ireland enjoyed an existence comparable in many ways with that of the Italian republics or French *communes* of the same period. Owing to the greater weakness of the central government in Ireland, Irish towns enjoyed an existence more nearly approaching the state of independent republics than the English boroughs whose activities were restricted by the stronger central power. The *droit de guerre privee*—the right of making private war—one of the cherished privileges of the French and Italian *communes*, was unknown in England. War with neighbouring Irish clans was a frequently recurring feature in the history of some Irish towns. Alliances between towns for mutual welfare and defence such as appear in the history of continental

towns during the middle ages occur in the history of our Irish towns. Dublin and Drogheda in the year 1252 entered into a compact to maintain mutual peace and amity. The citizens and burghers agreed to render mutual aid in resisting any who sought to trouble or molest them. In the year 1285 the alliance was enlarged by the admission of new allies. These were the cities of Waterford, Limerick, and Cork. The terms of the alliance, the object of which was the maintenance of their respective liberties appear in the "White Book" of Dublin. The mere fact of the alliance is a sufficient indication of the weakness of the central government.

The civic communities dwelling within these walled towns did not live, however, in complete isolation from the central power. In the matters of justice, taxation and legislation they were brought into touch with the royal government. In the administration of justice we have already seen that the Hundred Courts possessed a wide jurisdiction but that their jurisdiction did not extend to the special pleas

of rape, arson, forestalling and treasure trove. These were specially reserved for the king's justices who went on circuit from town to town as is the custom to-day. Thus we read in a charter of Richard II. to Dundalk that a certain election was to take place in the presence of the King's Justices when they came to Dundalk to hold the Assizes and keep the pleas of the Crown.

The royal revenue from the fee farm rents of Irish towns has already been mentioned. Further revenue was derived from indirect taxation in the shape of royal customs dues. A certain custom called the " coket " was levied, the proceeds of which went to the king. By letters patent of the year 1376, Edward III. granted to the mayor and commonalty of the City of Waterford the custom due to him at the said city called " coket " for a period of ten years, the citizens to pay each year at his treasury in England one hundred shillings in two instalments. The purpose of the grant was stated in a writ of the following year to be for the repair

of the quays and walls of the city. A statute of 15 and 16 Edward IV. directs that the freemen of the city of Waterford should be freed from the payment of poundages charged on all merchandise imported into, and exported from Ireland. This same tax is mentioned in a statute of the fifteenth year of Henry VII.'s reign by which the King was granted one shilling out of every twenty shillings' worth of all merchandise imported or exported for sale (wine and oil excepted). Edward III., by letters patent dated the 15th May, 1375, granted to the mayor and commonalty of Dublin the King's custom in the city and port of Dublin and in the other ports between Skerries and Arklow, called the Great New Custom; also the Small Custom together with the right to the King's seal appertaining to the custom. Collectors or customers were to be elected and sworn by the Mayor and commonalty annually, and they were to have the sole use of the seal of the "coket."

State papers relating to Ireland show that from an early period the Kings of

England were in the habit of calling upon the towns of Ireland for help in money or otherwise to enable them to prosecute their foreign wars. Thus, towards the close of the year 1241, when Henry III. was engaged in making war upon the King of France, a mandate was issued to Maurice FitzGerald, the Justiciary of Ireland, ordering him to cause all Irish cities, burghs and demesnes of the King to be taxed. In the same year a mandate was issued by Henry III. to the mayor and citizens of Dublin whereby the King commanded his good men of Dublin to cause a new galley to be made, and with the one they already had, to be well equipped and prepared to go on the King's service whither the King should order. Similar letters were addressed to the men of Waterford ordering them to prepare and equip two galleys. Drogheda, Cork, and Limerick were ordered to have one galley each in readiness.

The destination of these ships of war appears from another mandate, dated 7th July, 1242, whereby the King ordered his

Justiciary in Ireland to cause the King's galleys to be sent well equipped and manned to the coasts of Poitou, Normandy, Brittany and Boulogne to harass the King of France and the King's other enemies. At the same time a further mandate was issued to the Mayor and good men of Dublin requiring them to send all their galleys and ships to those parts.

In the year 1253 a further call was made upon the cities and towns of Ireland. According to one of the State Papers of that year it appears that the King's land of Gascony was so disturbed that unless speedy succour were afforded its loss might be apprehended, and that Henry was about to start for that country. The Justiciary was accordingly commanded to procure aid from the archbishops, bishops, abbots and others in Ireland and from the vills, cities, and burghs of that country.

The cities and towns of Ireland, therefore, seem to have formed an important source of supply to the Kings of England when in need of men or ships or money.

Parliamentary Representation.

For the details of the representation in Parliament of Irish cities and towns during the early mediæval period we are indebted to Dr. Lynch's admirable work, "A View of the Legal Institutions, Honorary Hereditary Offices, and Feudal Baronies established in Ireland during the Reign of Henry the Second." Mention is made therein of the holding of several Parliaments or Public Councils as early as the reign of King John. The most interesting of these from the municipal point of view is that which was summoned by the King's writ, dated 10th February in the fifth year of King John's reign. Writs were issued to the Archbishops, Bishops, Abbots, Priors, Archdeacons, and Clergy, the Earls, Barons, Justices, Sheriffs, Knights, Citizens, Merchants, Burgesses, and Freeholders, and all other his faithful subjects in Ireland acquainting them that an "Aid" had been granted him in England, and praying them to grant him a similar "Aid" in this moment of his necessity as the Justiciary

of Ireland, Walter de Lacy, would declare to them. To obtain an extraordinary "Aid" like the above was the principal cause at that period, according to Dr. Lynch, of convoking full Parliaments; only in the *Commune Concilium* could such supplies be granted.

In the 28th year of the reign of Henry III. that King ordered his Justiciary in Ireland to cause equal weights and measures to be used throughout Ireland; he first, however, convoking a Council of all the discreet burgesses of that land, "*convocato prius consilio discretorum omnium burgensium de terra nostra Hiberniae.*".

Ten years later writs were issued by the same monarch to the Prelates and Magnates of Ireland and to the Freemen, Citizens and Burgesses, stating that Nicholas de Sancto Neoto, Prior of St. John's of Jerusalem in England, and John Fitz Geoffrey, the Justiciary, would explain to them the King's necessities in his war and the danger of the loss of Gascony, then threatened by the King of Castile, and requesting them to come over with all

possible men and money to the defence of the said land.

Edward I., being in need of money for the prosecution of his wars against the Welsh, directed Thomas de Clare to have "*colloquium et tractatum*" with the Abbots, Priors, and other Religious, the Citizens, Burgesses, Merchants, and Commons of the cities, boroughs and mercantile towns of Ireland for the purpose of obtaining a loan of money for the King.

In the 28th year of Edward I.'s reign writs were directed to all cities and boroughs throughout Ireland summoning them to a "general Parliament" at Easter in Dublin. The commons of the cities and boroughs were directed to be represented by two or three burgesses each. The writ notified them that the king was about proceeding to Carlisle to repress a rebellion of the Scotch for which purpose he needed a subsidy.

The proceedings of the Parliament held to grant this subsidy are detailed in the Chief Remembrancer's Roll of that year. The record relates that previous to the

meeting of the Parliament the Justiciary made a tour of the cities and towns with the chief officers of each of which he had diligent treaty as to the subsidy. From Drogheda, we learn, 260 marks were obtained—200 marks from Drogheda *ex parte* Uriel, and 60 marks from Drogheda *ex parte* Midiae. The reason given by Lynch for this remarkable itinerary was that the continued applications of the King for subsidies and aids had made his Irish Parliament doubtful of its ability to obtain new supplies from the country.

In the 3rd year of Edward II.'s reign writs of Parliamentary summons were issued to the Prelates and Magnates of Ireland, as also to the Sheriffs for the election of two Knights out of every county and of two Burgesses out of each city or borough.

In the thirty-first year of his reign King Edward III. issued his *Ordinatio pro Statu Hiberniae* in which he directed that Councils might be held to which only the Prelates and Magnates and certain of the more discreet and upright men of the neighbourhood where the Council happened to

meet should be summoned. In commenting upon this curious ordinance, Dr. Lynch says that it "gave Royal sanction to a measure of indispensable necessity." The practice of frequently calling nobles from their estates to every place, however distant, where parliaments were held was, he said, attended not only with danger to themselves, but with considerable detriment to the English districts in general, which usually suffered at such times from hostile invasions. We might add also that it throws a flood of light upon the state of the towns in mediæval Ireland. In what a state of isolation must some of them have existed when they had only their stout walls and the strong arms of their burghers to defend and maintain their existence!

Acting upon the Ordinance mentioned writs of summons were issued two years later to certain of the Prelates, Peers and Commoners, some of whom resident in the southern part of Ireland, were directed to assemble at Waterford, while those of the nearer parts of Leinster were summoned to meet at Dublin. The representatives of

Drogheda *ex utraque parte aquae* were directed to attend at Dublin, those of Cork at Waterford. Amongst other towns represented at either of the two places were Dublin, Limerick, Waterford, Kilkenny, Rosse (New Ross), Clonmel, and Wexford.

In 48 Edward III. writs of Parliamentary summons were issued to Dublin, Waterford, Cork, Limerick, Drogheda *ex utraque parte aquae*, Youghal, Kinsale, Rosse, Wexford and Kilkenny.

In the list of towns summoned to the Parliament which met in the first year of Richard II.'s reign, Galway and Athenry appear while Kinsale disappears, although summoned to the Parliament last mentioned.

The representation of Irish cities and towns in the Councils or Parliaments held in Ireland in the early mediæval period is important also from the point of view of Irish constitutional history. From the study of the early writs of summons the remarkable fact appears that the cities and towns of Ireland were represented in an Irish Parliament or Common Council at

an earlier date than were the English boroughs in an English Parliament.

Citizens and burgesses were summoned to the Parliaments or Public Councils held in Ireland in the years 1204 and 1254. It is a moot point whether these assemblies can be properly styled "Parliaments." They are so designated by Dr. Lynch. In Dr. Stubbs' "History of the English Constitution" there is no mention of the burgesses of English towns having been summoned to any Parliament or Common Council before the year 1265—the year of de Montfort's Parliament. The representation of the shires, cities and boroughs was, he said, the great feature of that Parliament. He suggests but does not claim that the representatives were elected, the writs of summons containing no order for the election of representatives. The writs of Parliamentary Summons of the years 1204 and 1254 quoted by Dr. Lynch contain no order for the election by the citizens and burgesses of their representatives. The machinery of the Hundred Court may, however, have been availed of

for that purpose. That burgess representation in Parliament took place in Ireland at a period anterior to that important event in England would be by no means improbable, as the English colonists, the supporters of English power in Ireland, were, as we have seen, to a large extent grouped together in Irish cities and towns.

In this connection the Parliament which assembled in Ireland in the year 1254, the 38th year of King Henry III.'s reign, is important. In the same year a Parliament was summoned in England for a similar purpose, namely, to grant the King assistance in men and money in his desperate straits in Gascony. To the Irish Parliament the citizens and burgesses were summoned. Four chosen knights from each county and representatives of the clergy of each diocese were, according to Dr. Stubbs, summoned to the Parliament in England. As to the representation of the cities and boroughs he is silent.

CHAPTER VI.

Relations with the Native Population.

The system of municipal government which existed in mediæval Ireland and which has been described in these pages would have resulted in the conferring of great and permanent benefit upon the country had its advantages been extended to the people of Ireland generally. But such, unfortunately, was not the case. A narrow-minded and short-sighted policy upon the part of the rulers of the conquering race confined those advantages to their own people and that policy was reflected in the civic councils. As with the Romans of old, the town was used as an instrument for extending the sway and maintaining the power of the conquerors. The existing towns fell rapidly into the hands of the Anglo-Norman barons and were peopled by their followers and others from England, the old inhabitants—Danish and Irish—having to make way for the

newcomers. According as the tribe-lands were wrested from the native population strong castles were built under the shelter of whose walls English settlers were induced to establish their homes, being tempted by the offer of privileges with regard to their government and trade. Thus Kilkenny, Trim and other towns sprang up. The towns were walled and fortified with towers after the manner of the time. As the civilian population as well as the military were trained to the use of arms, the groups of people within the town walls were as so many garrisons to hold the native population in check and to act as outposts for a further advance. In the towns of the Roman empire the new colonists were encouraged to become as one with the old inhabitants with whom they freely intermarried, and to adapt themselves to the laws and customs of their neighbours. Even purely military garrisons in course of time became civilian populations whose interests were welded with those of the surrounding district. No attempt was made to force the language, laws and customs of

Rome upon an unwilling population, nor was any attempt made to treat the old inhabitants as strangers in their own land or even to place them in a position inferior to that of the new settlers. It was in this liberal-minded and far-sighted policy that the secret of Rome's success as a colonising force and empire builder lay. It is in the pursuance of a policy the direct reverse of that of imperial Rome that the secret of England's failure during a period of over seven centuries to weld Ireland into a harmonious part of her empire is to be sought. Irishmen were treated as outcasts and aliens in their own land. Their tribal customs were ignored, their laws and language banned and they themselves cut off as far as possible from friendly intercourse with the new settlers. Down through the centuries this policy of aloofness was imposed upon and observed by the civic communities. To carry out that policy rigidly and relentlessly during a long period was a practical impossibility. Relaxations of it were made from time to time owing to the good sense of the burghers, but in the

main the policy was persisted in. The extent to which that policy militated against the true welfare of the inhabitants of Irish towns cannot easily be estimated. The Irish people who were friendly and hospitable by nature would have quickly assimilated the foreign element in the country, were it not for the policy adopted. They were forced by it in self defence to counter hostility by hostility, with the result that war between townsmen and clansmen became a common feature in the history of the country.

The records of Irish towns evidence the unsatisfactory relations between the colonists and the native population. Those of Dublin, a city which was more immediately under government influence than any other Irish town, show how consistently the unhappy policy of hostility was carried out. In the year 1343 the Deputy of the King's Justiciary granted permission to the mayor, bailiffs, and commonalty of Dublin to levy certain customs. The grant was stated to have been made in consideration of the good and free service hitherto

rendered by the citizens in resisting the malice of divers of the Irish enemies, warring against the King and his faithful people. In the year 1355 Edward III. granted to the mayor and commonalty of Dublin one hundred marks out of the rent due to the Crown in consideration of their having aided Thomas de Rokeby, Justiciary of Ireland, and his army while at Wicklow, making war upon O'Byrne and his sept, and divers other powerful Irish of Leinster in combination with him. Other grants were made by the same monarch in recognition of services rendered by the citizens in resisting attacks of "Irish enemies." A century later we find the existence of similar hostility between the citizens and their Irish neighbours. A memorandum in the Dublin Records states that no business was transacted in the Assembly on the fourth Friday after Michaelmas, 1467, as the Mayor, Bailiffs and Commons of the city were in O'Byrne's country with the Lord Deputy. Another memorandum states that business was not transacted in the Assembly on the fourth

Friday after Easter in the year 1468, because the Mayor, Bailiffs and Commons of the city were engaged in a hostile incursion upon O'Conor's country (Offaly) under the command of the Lord Deputy.

Some years previously the Dublin Assembly had banished Irish people from the city. At a meeting of the Assembly held in July 1454 it was ordained that "all manner of men of Irish blood and women, that is to say, Irish nuns, Irish clerks, and Irish journeymen, Irish apprentices, Irish servants, and Irish beggars, men, women and children, also all manner of Irish householders, except all they that hath been twelve years dwelling within the said city, that they and every of them avoid by this day four weeks." Those that should remain in the city after that date were to be subject to the penalties of forfeiture of goods and chattels and imprisonment.

At the same Assembly meeting it was further ordained that "no manner of man dwelling within the said city take no Irish apprentices nor Irish servants from this day forward upon the pain of forty

shillings as often as it may be found." These ordinances, however, do not seem to have been rigidly enforced. During the decades immediately succeeding this year the names of several Irishmen appear as holders of office in the city or as freemen.

The charter granted by Henry V. in the first year of his reign to the citizens of Limerick specially directed that no one of Irish blood or nation should be mayor, or exercise any other office within the city; and that no person should take or maintain any man or child of Irish blood and nation as apprentice, on pain of losing his franchise.

A charter granted by Henry VI. to the citizens of Waterford forbade any lieutenant or other lord to bring into that city any Irish enemies, English rebels, or other ill-governed horse or foot-men to lodge there, except such as the mayor and bailiffs might be able to rule and govern, and who could victual themselves with their own money. The well known bye-laws of the Galway Council forbidding that any person should bring any Irishman "to brage or boste upon the towne" and that

neither O' nor Mac should "strutte ne swaggere thro' the streets of Gallway" were made at a period somewhat later than that under review.

Even commercial relations between the townsmen and the people of the country districts seem to have been prohibited. Liberty to trade with the native population was an exceptional privilege. There is a writ or mandate of Edward III., dated 1374, on record addressed to the seneschals and sheriffs of Wexford and Kilkenny commanding them to proclaim that he had granted to the mayor and citizens of Waterford, that every person of the district aforesaid, wishing to go to the city of Waterford, with corn and other victuals to be sold there, should be permitted to pass freely and without disturbance. The burgesses of Youghal were the recipients of a charter in the year 1404 which conferred upon them a licence to treat with rebels. Ten years later they received a similar charter extending the period of treating with rebels. Henry IV. granted to the sovereign and commonalty of the town of

Rosse (New Ross) the privilege of selling all kinds of victuals to the Irish enemies, as well in time of peace as of war.

These are but a few illustrations of the policy imposed by the central authority and adopted by the civic councils with regard to the native Irish population. Fortunately for the welfare of both the townsmen and the clansmen that policy was not carried out with extreme rigidity, Irishmen finding their way to some extent into civic life and industry and rising to positions of eminence therein, but the policy was persisted in sufficiently to perpetuate a line of cleavage between the English settlers and the Irish people, with the result that at a later period the former were left weak and helpless and isolated in the hands of a government who ruthlessly destroyed the industry and trade upon which their welfare and very existence depended.

CHAPTER VII.

The Tudor Period.—A Period of Transition.

The constitutions of Irish municipal bodies underwent little change during the century covered by the reigns of the Tudor sovereigns. The charters granted during this period were as a rule similar in effect to those granted in the earlier period. One feature, however, which characterises many of the charters calls for some comment. It was a clause of incorporation, whereby the mayor, burgesses and commonalty of a number of Irish towns were created bodies corporate with perpetual succession. The legal effect of this clause of incorporation was that these corporate bodies became *personæ* in the eyes of the law. The mayor, burgesses, and commonalty could henceforth plead and be impleaded in Courts of Justice in their corporate capacity like ordinary individuals. As incorporated bodies they became entitled to acquire

and dispose of real property, a privilege from which these urban communities would seem to have been debarred since the year 1495, when the Act known as "Poyning's Law" was passed.

No Act specifically disenabling Irish municipal bodies from acquiring and dealing with land appears amongst the statutes of the Irish Parliament. In the year 1391 an Act was passed by the English Parliament which extended the provisions of the Statute of Mortmain to guilds, fraternities, and to the Mayors, Bailiffs and Commons of cities and towns in England. "And moreover it is assented," recites the Act, "because Mayors, Bailiffs, and Commons of Cities, Boroughs, and Towns which have a perpetual commonalty, and others which have offices perpetual, be as perpetual as people of religion, that from henceforth they shall not purchase to them, and to their Commons or office, upon pain contained in the said Statute *De Religiosis.*" This Act, accordingly, disenabled municipal bodies in England, from acquiring lands thenceforth. No similar Act appears in

the records of the Irish Parliament. Poyning's Law of the year 1495 would, however, have had the effect of making this law apply to municipal bodies in Ireland. The incorporation clause which appears in several of the Tudor charters would, therefore, have been of importance to the citizens and burgesses incorporated.

In a charter granted to the burgesses of Youghal by Queen Elizabeth in the first year of her reign, the corporation of that town were empowered to purchase lands to themselves in fee, provided the same should not exceed the yearly value of £6. The sovereign and commons of Kinsale, under a confirmatory charter granted by Queen Elizabeth in the thirty-first year of her reign received a regrant of certain lands, and were empowered to take and acquire other lands to a value not exceeding £30 a year. A number of Irish corporate bodies received grants of lands belonging to religious houses which were confiscated by the Crown during the sixteenth century.

The other feature of the Tudor charters which calls for remark is that a number of

them contain a grant of the privilege of holding a " Court of Pie Poudre " in connection with the fairs and markets thereby granted. This interesting Court will be referred to at a later stage of this work.

The list of civic officers in Irish towns had considerably lengthened by this time. A formidable list of functionaries appears in Letters Patent of Queen Elizabeth in the ninth year of her reign whereby the citizens of Waterford were granted the privilege of electing their mayor and bailiffs annually, and a recorder, town clerk, sword-bearer, marshal, searcher, water-bailiff, gauger, constable, sergeants at mace, and other officers and ministers usual and necessary.

The sixteenth century was marked by two important events which were destined to have a disastrous influence upon the welfare of Irish towns. One was the Reformation. The other was the general subjection of Ireland to the power of the English Crown.

The former of these events introduced into Irish towns a new source of discord, a new line of cleavage between the colonists

and the native population before which even racial differences paled into insignificance. The colonists and the native Irish population were gradually merging into one body. Irishmen were flocking into the towns in greater numbers and achieving high places in civic and commercial life. Intermarriages between the old and the new population were becoming more frequent. Irish customs were spreading in the towns. The Irish language was being adopted in the towns and spoken largely even in Dublin itself. The process of fusion was gradually taking place, when a new check to the growth of a united Irish nation was caused by the introduction of religious differences into the country, and a fateful heritage of religious dissension bequeathed to modern times.

The assumption by Henry VIII. with the consent of the Irish Parliament of the title of "King of Ireland" in place of that of "Lord of Ireland" with which his predecessors had been contented, symbolised the second great feature of the century—the growth of the royal power in Ireland.

It was Henry's policy to become King in fact as well as in name—a policy which was ably carried out by his immediate descendants. In the fifteenth century English power in Ireland had reached its lowest ebb, and the Pale had become reduced to its narrowest limits. The self-governing towns with few exceptions were all but independent. The strong hand of the Tudors which lay heavily upon England crushed out any vestiges of independence in Ireland. Devastating wars in which Irish nobles and feudal lords of Anglo-Norman lineage were reduced to one common level of subjection and impotence marked the progress of the century.

The loss in political power which characterised alike the towns of Ireland, the feudal lords and the Irish nobles was accompanied by a loss of material welfare. The wars of Elizabeth's reign entailed great destruction of wealth and delivered a rude blow at Irish prosperity. In the vivid pages of Mrs. Green's book "The Making of Ireland and its Undoing" we read of the wonderful prosperity of the country

during the fourteenth and fifteenth centuries—a prosperity due to its great natural resources and to the industry and enterprise of its inhabitants, natives and colonists. The wealth of the country attracted the greedy eyes of English landowners, merchants and officials. The lucrative home and foreign trade which had been built up in Ireland could not be allowed to continue. Ireland's gain was regarded as England's loss. The exponents of English commercial policy urged the destruction of that trade. That the welfare of their own kith and kin in Ireland, the English colonists, depended upon the continuance of that trade mattered not. By leaving England and settling down in Ireland they had apparently lost all claim to consideration. In matters of trade rivalry the native Irishman and the English colonist were henceforth treated as one. The natural result was that many of the towns threw in their lot with the native population in the struggle for life and freedom. In a work dealing primarily with the system of municipal government in Ireland we cannot enter into a detailed

account of the attempted destruction of Irish trade. For particulars the reader is referred to the authority mentioned. The combined result of the subjection of the whole country to the English Crown and of the impoverishment of the towns was that the civic communities were no longer in a position to bargain with the Crown. The work done by the Tudor sovereigns enured to the profit of the Stuarts. They had an easy task in directing the future municipal policy of Irish towns.

CHAPTER VIII.

Town Planting in Ulster.

The reign of James I. marks the beginning of a new era in Irish municipal history. The whole course of municipal government in Ireland received a new direction. It was forced into a new channel and diverted from reaching its true and proper end. The very wells of municipal life from which should have issued forth a pure and copious stream to fertilise the field of municipal endeavour were poisoned and there issued forth a sluggish, stagnant stream poisoning everything on its way and drying up before it had run its course.

In the opening pages of this book it was stated that it was part of England's policy towards Ireland to use the town as an instrument for extending the sway and maintaining the influence of the conquering race in this country. For a second time in Irish history does that policy spring into prominence. James I. deliberately

used the town as an instrument for extending the royal power in Ireland with a large measure of success. An unrivalled opportunity was presented to him when at one fell swoop a considerable portion of Ulster, comprising the territory of six counties, fell into his hands by the forfeiture under English law of the lands ruled over by the scions of the princely houses of O'Neill and O'Donnell, attainted for crimes which they had never committed. Here was a large extent of virgin soil whereon to work.

Shortly after the flight of the Earls a Commission was appointed by King James to consider and report how this vast territory comprising the counties of Tyrone, "Coleraine," Donegal, Fermanagh, Armagh and Cavan could best be planted. After due deliberation the Commissioners laid down certain general grounds to be observed in the plantation. The whole territory they recommended should be divided into lots of 1,000, 1,500, and 2,000 acres respectively. Every lot or proportion was to be made a parish, glebe lands at the rate

of 60 acres per 1,000 being set aside for the support of an incumbent. The proportions were then to be distributed amongst suitable English or Scotch "undertakers," officials serving in Ireland, and well affected natives. The king having made choice of the persons, it was recommended that the proportions should be distributed by lot, in order to avoid jealousy amongst the grantees.

The Commissioners then proceeded to plan out the territory, county by county. Starting with Tyrone they recommended that 19,000 acres be reserved for the Primate of Armagh and the bishops of Clogher and Derry, 6,125 acres for incumbents' glebes, and 1062½ acres for the College of Dublin (the newly established university) and that 69,000 acres be allotted to undertakers, 54 in number, leaving a residue of 2,750 acres. Having thus provided for the Church and the undertakers, the Commissioners reported that they held it convenient that there should be five corporate towns or boroughs erected in that county, with markets and fairs and other reason-

able liberties, and with power to send burgesses to Parliament—namely, at Dungannon, Clogher, Omagh, Loughinsolin and Mountjoy. They suggested that there should be a levy or press of tradesmen or artificers out of England to people these towns. 500 acres of land were to be allotted to Dungannon, 375 acres apiece to the other four towns, and the remaining 750 acres assigned for the maintenance of a free school to be erected at Mounjoy.

With regard to the disposal of the native population they recommended that some should be planted upon the bishop's lands and the glebes of the parsons, doubtless with a view to their spiritual regeneration, some upon the lands of Irish freeholders, and others upon the lands of such of the "servitors" or officials who should be unable to plant their lands with English or Scotch tenants. The "swordsmen" were to be transplanted into waste lands in Connaught and Munster and dispersed.

The plantation of the other counties on similar lines was recommended. In the county of "Coleraine" two corporate towns

or boroughs were to be erected with power to send burgesses to Parliament. Seven corporate towns were to be erected in Donegal. Fermanagh and Cavan were each to have three corporate towns, and Armagh four. Thus twenty-four corporate towns in all were provided for. After the towns should have forty houses divided amongst forty families they were to be incorporated and authorised by charter to send two burgesses each to Parliament.

The scheme of plantation thus outlined by the Commissioners appointed by King James was ultimately carried out with some modifications. According to the State papers of the period difficulties were experienced in the removal of the native population. In the Calendar of the Carew Manuscripts there is recorded a document, dated July, 1611, embodying a communication from the Lord Deputy of Ireland to the English Privy Council, with the reply of the latter body. The Lord Deputy writes :—

"That experience tells the undertakers that it will be almost impossible for them

to perform the work they have undertaken, if the natives be removed according to the general project, for when they are gone there will be neither victuals nor carriage within twenty miles, and in some counties more. Therefore, I hold my first proposition, that to remove the principal men the first year and the inferior tenants one year after, as the plantation shall increase, so as it be done within three or four years will be best."

The answer of the Lords of the English Privy Council was as follows:—

"We are of opinion that, notwithstanding former instructions for the removal of the natives from the lands of the plantation, the swordsmen be removed as conveniently as may be, who may have leave to carry such followers as may be encouraged to be removed with them, such labourers of the natives as the undertakers are willing to have moved for clearing lands for British families; but such other natives as the undertakers desire to keep for this year, you may tolerate for this year, only without expectation of further favour."

In the following month a warrant signed by the Lord Deputy and other members of the Irish Privy Council for the removal of the native population of the County of Donegal was issued to the Sheriff of that county. After reciting that many natives had remained on as tenants to British undertakers, the "Warrant" proceeds:—

"In consideration whereof, and to take away all false hopes and conceits from them both, we have thought it requisite to charge and authorise you forthwith after the end of this present harvest and inning of their corn, to remove the natives of that county into the proportions allotted to them in the barony of K., and the rest of the inferior sort, to whom no lands have been assigned into the Bishops' and servitors' lands, in no less numbers than the same will conveniently bear, both in respect of the grazing and the manureance. And concerning the surplus of the common people, if any remain that cannot be disposed of, you are to admonish and strictly to intimate unto them by proclamation that they must prepare themselves to depart with their

goods and chattels, at or before the first day of May next, into what other parts of this realm they please, where they may find best conditions of being, according to the tenor and effect of a former proclamation heretofore published."

In pursuance of the recommendations of the Commissioners and of the instructions of the English Privy Council a complete change was effected in the ownership of the soil of this extensive territory, comprising six counties of Ulster. English and Scotch settlers undertook the plantation of individual "proportions," planting their lands as far as possible with English and Scotch settlers. Government officials, or "servitors" as they were called, were rewarded with grants of a number of the lots. They were required to take the oath of supremacy, and conform themselves to the established religion. Some well affected Protestant Irish received royal grants of a limited number of lots. A remnant of the old Irish population were permitted to remain as "hewers of wood and drawers of water" for the new settlers.

To hold this large area which had passed under the complete domination of the Crown an extensive scheme of town planting took place. The Commissioners had recommended that twenty-four towns should be erected, some on the sites of old Irish towns as at Derry, others on virgin soil at places to be chosen by themselves. Within a few years, accordingly, the *nuclei* of a number of towns sprang up, and charters incorporating the new inhabitants were granted by King James with a lavish hand.

The charters granted to the Ulster towns were nearly all uniform in plan. They provided that there should be one chief officer, variously styled sovereign, provost, warden, or portreeve, "Free Burgesses"—generally twelve in number—and a commonalty. Under the charters the "commonalty" were to include all the inhabitants of the place incorporated together with such others as the chief officer and free burgesses should admit to the freedom of the town. The sovereign or other chief officer was to be annually elected; the "Free Burgesses" were to hold office for

life. The power of electing the chief officer, the "Free Burgesses" and the more important officials of the new corporations was vested in the sovereign or other chief officer and the "Free Burgesses," who thus by charter were made close corporations, filling vacancies in their body by self-election. The only functions in which the commonalty were authorised to join were the election of inferior officers and the making of bye-laws. Power to hold a Court of Record with jurisdiction limited generally to five marks was conferred. The grant of the privilege of holding fairs and markets was likewise made. Each newly incorporated town was further empowered to send two burgesses to the Irish House of Commons. The election of Parliamentary representatives was vested in the chief officer and "Free Burgesses." The first sovereign or other chief officer and the "Free Burgesses" were in some, if not in all, cases nominated by the Crown.

Thus there was established in possession of the lands of Ulster a new population, alien in race, alien in sympathy, alien in

religion from the old inhabitants. For the better securing of the newly planted district a network of towns was formed wherein complete control of the civic destinies was vested in small, select bodies, bound to the Crown by the closest ties of interest and religion. And so arose the problem which generation after generation of statesmen have failed to solve, that problem which is known the world over as the "Ulster Question."

The charters granted to the towns of the newly planted district differed very materially from the charters hitherto granted to Irish towns. In the older charters the rights and privileges granted were conferred upon the whole body of citizens, burgesses, or commonalty, with no distinction in favour of any particular class of the inhabitants. The new charters, while professing to incorporate all the inhabitants of the incorporated district, singled out small select bodies of the inhabitants under the name of "Free Burgesses," in whom together with the chief officer, important powers were vested.

The number of "Free Burgesses" was generally fixed at twelve. These thirteen favoured individuals in each corporate town were endowed with the power of electing the "Sovereign" or other chief officer, and of filling vacancies which should occur in the number of "Free Burgesses." They were also empowered to appoint the Recorder, Sheriffs, Town Clerk and other important civic officers. In the "Free Burgesses" and the chief officer was also vested the important function of returning two members to the Irish House of Commons. The only functions in which the general body of the inhabitants were permitted to join were, as a rule, the election of inferior officers and the making of bye-laws. The new corporations were apparently designed with the object of influencing civic policy through the small select bodies thus created, and through them of influencing opinion in the Irish House of Commons. That such was the object was made manifest by the subsequent history of these corporate towns.

A few years before the reform of Irish

corporate bodies which was effected by the Municipal Corporations (Ireland) Act of 1840 an inquiry was instituted into the state of municipal corporations in Ireland. In the course of that inquiry a report was made upon the corporate bodies established in Ulster in connection with the plantation of that province. In that report it is stated as follows :—" The creation of these corporations appears plainly to have been designed to increase, in the new Parliament, the influence of the Crown, through the persons who had received those large possessions from its bounty, and to give to the settlers, who formed the heads and free burgesses of the new corporations, or rather to the owner of the soil on which the borough was created, direct influence and power in the legislature. They were, in fact, close boroughs, exclusively Protestant, and sending into Parliament a large body of new members whose presence King James required to control the party, then adverse to him, and possessing considerable power in the Irish House of Commons."

In the scheme of plantation outlined by the Commissioners it was proposed that allotments of land varying from 200 to 800 acres should be made to each of the corporate towns to be established. In the scheme as actually carried out this portion of the plan was seriously modified. The newly incorporated bodies received no lands in their corporate capacity. Small grants of land were, however, made to individual members thereof. In some cases, as in that of Killybegs, the charter of incorporation made a grant of lands to the person named as the first head of the corporate body on condition that he should make small grants thereout to a certain number of settlers, and provide a space for a schoolhouse, a space for a church, and a space for a common. In other charters of incorporation no such grants were specified, but provision was made in separate charters for small allotments to individual inhabitants. In this respect the new corporations differed signally from the old corporations, many of which enjoyed extensive lands. The lack of corporate lands had a serious effect upon the

destinies of the newly incorporated bodies.

Referring to this feature of the new corporations the Report already alluded to states :—" Most of the corporations, as such, had therefore no property, save in the few instances in which a small and precarious income was derived from a grant of the tolls of new fairs or markets ; and the new communities, destitute of trade, enjoying (with the exception of the owners of the small tenements before alluded to) no land of their own, and constituting in fact, infant colonies in a country just subdued after a formidable rebellion, the result of which was to make the whole planted territory the property of the Crown and its grantees, became, in their very origin, dependents upon the bounty and patronage of the owner of the soil. If their institution be considered as a political expedient for securing, in the Irish House of Commons, direct influence to the Crown through the medium of the patrons all of whom were grantees of the forfeited estates, and were bound, by recent obligation and by the strongest

interest, to sustain the British sway, they were certainly adapted for that purpose. If they were intended as municipal bodies, framed or calculated to watch over and advance the trade, the wealth, and the civilisation of the communities over which they presided, or to provide for these communities a local system of sound self-government, they were wholly unsuited for such a purpose, and in no one instance has any of them achieved it. On the contrary, their dependence upon the patron, which was probably one of the matters deemed essential in the plan of settlement of which they formed a part, presented (if they existed for any other purpose than that of political influence) an original vice in their institution, rendering them from their commencement liable to that individual control, which, as far as we can trace their operation as corporate bodies, made them, not only in the election of representatives in Parliament, but in the exercise of every corporate function, the mere creatures and instruments of the patrons of the day."

Grafted upon the original scheme prepared by King James's Commissioners was a special scheme for the plantation of the county of "Coleraine." Some worthy citizens of London saw in the proposed plantation a unique opportunity of exploiting to their own advantage the great natural resources of Ulster. The matter was brought under the notice of the Common Council of the City of London with the result that negotiations were entered into between the Crown and the Common Council with a view to the plantation of a portion of the forfeited lands. An agreement was entered into between the Crown and the City of London whereby the citizens undertook the plantation of considerable tracts of territory which comprised what was then called the county of "Coleraine." In pursuance of this agreement a charter was granted by King James in the eleventh year of his reign whereby this territory was granted to a new corporation called "The Society of the Governor and Assistants, London, of the New Plantation in Ulster," popularly styled

"The Irish Society." The lands thus granted were disposed of by the Society as follows:—The towns of Derry and Coleraine, and two large tracts of land adjoining them, were reserved to the "Irish Society," to be held and managed by them; and the rest of the county (henceforth known as "Londonderry") was granted out to twelve companies of the Corporation of London, namely, those of the goldsmiths, grocers, fishmongers, ironmongers, mercers, merchant tailors, haberdashers, cloth-workers, skinners, vintners, drapers, and salters.

Previously to the incorporation of the "Irish Society," articles of agreement were entered into between the Crown and the City of London, specifying the terms upon which the citizens were to undertake this portion of the New Plantation of Ulster. Among the stipulations of these articles were the following:—

A sum of £20,000 was to be contributed by the city, £15,000 of which was to be expended in the Plantation, and £5,000 in the "clearing" of private interests.

Two hundred houses were to be built at Derry, and room was to be left for building three hundred more. Four thousand acres, adjacent to Derry were to be "laid thereunto"—bog and barren mountain to be no part thereof, but to go as waste for the city. One hundred houses were to be built at Coleraine, and room was to be left for two hundred more. Three thousand acres were to be "laid thereunto."

The sum originally intended to be laid out upon the plantation was £20,000, but this sum proving insufficient, a sum of £40,000 was ultimately contributed in certain proportions by the twelve companies.

Two charters were granted by King James to Coleraine in the eleventh year of his reign. Under the second of these it was granted and ordained "that all inhabitants of the aforesaid town of Coleraine, and all inhabitants within the jurisdiction and liberty of the same town of Coleraine, and their successors from henceforth for ever," should form a body corporate, "by the name of the Mayor and Aldermen and Burgesses of the Town of

Coleraine, within the Province of Ulster, in the Kingdom of Ireland." The charter created no special class of "Free Burgesses" as in the other Ulster corporations. Burgesses were directed by the charter to be elected by the mayor, aldermen, and the rest of the common council "out of the better and more honest freemen of the town aforesaid, or of the inhabitants within the liberty of the same." The charter provided that the Mayor should take the Oath of office and the Oath of supremacy, thus rendering Roman Catholics ineligible for that office.

Londonderry received a charter of incorporation from King James in the same year. The operation of this charter was, however, destined to be seriously impeded owing to the occurrence of difficulties between the Crown and the "Irish Society." Allegations were made that the articles of agreement entered into between the Crown and the City of London were not complied with by the "Irish Society." In the year 1634 the Court of Star Chamber imposed a fine of £70,000 on the Corporation

of London and the "Irish Society." After various proceedings which included the revocation of the Charter establishing the "Irish Society," the sequestration of the county of Londonderry, and the levying of rents to the King's use, and the grant of a charter by Oliver Cromwell in the year 1656, the matter was finally laid to rest by the grant of a new charter by Charles II. in the year 1662.

This charter ordains "that all citizens and inhabitants of the City of Londonderry and they who thereafter shall be citizens and inhabitants of said city, shall be a body corporate, by the name of the mayor and commonalty and citizens of the city of Londonderry." The "Irish Society" were endowed with important powers with regard to the government of the city. Under this charter Londonderry was governed until the year 1840.

CHAPTER IX.

Increase of the Royal Power in Ireland.

The increase in the power of the Crown in Ireland which was the main object of the municipal scheme embodied in the plan of the New Plantation in Ulster was to be still further promoted by the creation of new boroughs in the other provinces. No Parliament had been held in Ireland since the twenty-seventh year of Queen Elizabeth's reign. Reasons of state required that a new Parliament should be soon assembled in Ireland. Amongst other matters the attainder of the Earls of Tyrone and Tyrconnell and of other chief lords of Ulster had to be confirmed, and the estates of the undertakers in Munster and of the new undertakers in Ulster had to be established by Act of Parliament. The State papers of the period afford conclusive evidence that active preparations were made to ensure that in both Houses of the

new Parliament a majority in favour of the Crown should be secured.

Amongst the documents included in the collection of the Carew MSS. there is one under date 1611 which is endorsed in Carew's handwriting as follows:—"The counties of Ireland and how many boroughs there are in every county that have been of old and must be erected to send burgesses to Parliament." From this document we learn that Munster was to have nineteen boroughs represented in the new Parliament, whereof eight were to be erected; Leinster twenty-seven boroughs, whereof three and the University were to be erected; Connaught six boroughs, whereof four were to be erected; and Ulster twenty-four boroughs (the number provided for in the scheme of the Commissioners already mentioned) whereof twenty-two were to be erected. Thus, seventy-six boroughs in all were to be represented in the new Parliament, each by two burgesses. Sixty-six knights of the shire were to represent the counties in the Lower House, two for each of thirty-three counties (the county

of " Crosse " in Tipperary being represented separately from the county of Tipperary). Of these thirty-three counties, several had been formed since the date of the last Parliament. The constitution of the Lower House was accordingly fixed at the number of 218 members, namely, 66 knights of the shire and 152 burgesses. The document concludes with the statement that the Higher House consists of Lords spiritual and temporal to the number of 44.

In the same collection of MSS. appears another document of singular interest and importance, throwing as it does great light upon the real object which was kept in view in the creation of new municipal corporations. It is a document signed " Arthur Chichester "—the Lord Deputy—and is endorsed as follows :—" A roll of the names of the nobility, archbishops, etc., with the names of the shires, cities and towns of Ireland which are and may be enabled to send burgesses to Parliament." The document starts by enumerating the names of the lay and spiritual members of the Upper House—44 in all. The comment

upon these members is as follows:—"Of these 44 lords spiritual and temporal, we may assure ourselves of the 19 bishops, of the temporal lords three are under age and five Protestants, and so we shall sway the Upper House by seven voices." The Knights of the Shire are stated as 66 in number. "Of these three score and six knights," the document continues, "we may expect 33." The cities of Ireland are next dealt with. "The ancient cities of Ireland will return Protestants, as we conceive, Dublin, 1; Waterford, Limerick, Cork, cities newly created, Kilkenny, Derry, 2." Next in review come the Irish towns:

"Ancient borough towns which are also counties: Drogheda, Gallowaye, Knockefergus.

"Ancient boroughs which are not counties, but send burgesses to the Parliament:

Kinsale	Trim	Dundalk
Youghal	Athboy	Carlingford
Kilmallock	Navan	Swords
Rosse	Kells	Callan
Wexford	Downpatrick	Enistioge
Dungarvan	Dinglecoush	Thomastone

Athenry	Atherdie	Clonmel
Cashel	Naas	Kildare
Mullingar	Phillipstown	Maryborough
	Fethard	

"Boroughs newly created with power to send burgesses to Parliament: Athlone, 1; Cavan, 1; Gauran."

"We find that all the cities and towns before named sent burgesses to the last Parliament held in the time of Sir John Perrot's government (the city of Derry, and the towns of Athlone, Cavan, and Gauran excepted) which are since that time created and enabled to send burgesses likewise. Out of these 40 corporations we may expect 28 Protestants and may hope for more, by reason many of them sent men of that religion the last time." A list is then given of "boroughs to be erected and enabled to send burgesses to Parliament, if it please the King." Arranged according to provinces they were as follows:—

ULSTER (20).

Newry	Limavady	Belfast
Newtown	Dungannon	Coleraine

Armagh	Mountjoy	Monaghan
Charlemont	Omagh	Belturbet
Mountnorris	Strabane	Lough Rawre
Donegal	Lifford	Ballyshannon
Rathmullen	Enniskillen	

MUNSTER (8).

Lismore	Tullagh	Baltymore
Tralee	Mallowe	Bandonbridge
Ennis	Askeaton	

CONNAUGHT (4).

Sligo	Roscommon	Castlebar
	Curadromruske	

LEINSTER (3).

Carlow	Kilbeggan	Callon

and the University of Dublin.

Then follows the pertinent remark: "From these new corporations we may expect Protestant burgesses. And so the Lower House consisting of 218 knights and burgesses we may expect 123 Protestants and then we shall exceed them by 28 voices."

Another document from the same collection of State papers deserves to be quoted, showing as it does the systematic way in

which the constituencies were manipulated for the purpose of returning members in the interest of the Crown. It is intituled "A Certificate of the Vice President's of Munster for returning Knights and Burgesses to the Parliament out of that Province addressed to the Lord Deputy" and reads as follows:—

"According to your direction I have called to my assistance such of the Council of the Province as are now resident in this city, and have entered into consideration who are the Protestant knights and burgesses meetest to be chosen in each county to serve in Parliament, which I here certify, being confident every county will make choice of one recusant, who will be at their own disposition; and although I return three for a county, yet it will be hard to get one of them to be knight of the shire, except the other two nominated join their strength and voices for the election of the third man, and that good care be had in choosing meet sheriffs, and the powerful gentry of the county beforehand written unto by you and the undertakers dealt

withal to make more freeholders to increase voices for that election. For the old boroughs there is hope to get one burgess returned out of each of the towns of Youghall, Dungarvan and Dinglecuishe, and all the rest desperate. For the new intended corporations, if they be enabled by charter to send burgesses to the Parliament, I am sure they will be wrought to return those I have named, or any other the State shall appoint, and the number of them will appear by the underwritten certificate."

The preparations for the packing of the new Parliament having been completed, Parliament was summoned to meet at the Castle of Dublin in the year 1613. A careful selection of the members summoned to attend the Upper House was made, and similar care was exercised in the issue of writs for the return of the burgesses. Indignation was caused by the action of the government in thus attempting to influence opinion in both Houses of Parliament. That indignation found utterance in a dignified protest signed by certain of the nobility of Ireland and submitted to Sir

Arthur Chichester, the Lord Deputy. The signatories to the protest which took the form of a Petition were Lords Gormanston, David Rupe and Fermoy, Mountgarrett, Buttevante, Delvin, Slane, Trimleston, Louth, Dunboyne and Cahyr. The petitioners complained of not being advised beforehand of the public Acts to be transmitted to the King. Many of the ancient nobility, they said, were not summoned to Parliament, while several new peers were summoned. With regard to the constitution of the Lower House, they complained, "First, that new corporations are created not only within the late plantations, but also elsewhere and many (if not most) of those since the summons of Parliament; and clerks and others here, who have little or no estate in the kingdom, and in special within any of the corporations are to be returned as burgesses to have voice and place in Parliament. Secondly, the preposterous courses held by sheriffs and others of note in the election of knights, citizens and burgesses, the rejection of burgesses returned by ancient boroughs,

and many of the ancient boroughs omitted, much to the amazement and discontent of the natives and inhabitants, who claimed by their right a better usage and fairer carriage in matters of this quality."

The presence of an armed force in the neighbourhood of the place of meeting was another subject of complaint. With regard to this they stated: "Both they and we (that is, the members of the Lower and Upper Houses) may not but observe and fear the conceit that may be taken of the assurance of our loyalty, when in time of perfect peace such numbers of armed men are appointed to attend the sitting."

With regard to the place appointed for the assembling of Parliament they naïvely add, "And the holding of Parliament in the principal fort and castle of the kingdom, and that in a part thereof where the powder and munition lieth under which will not only aggravate the former conceit of doubt and suspect, but also strike fear into the sitters by the late example of England, which they wish you to prevent."

The Lord Deputy's answer in respect of the chief grievances formulated was as follows: "The new corporations were made by the King's express order, thinking it would be injurious to his good subjects of the new plantations in Ulster and other plantations in the realm to exclude them from having voices in his present assembly of Parliament, since the affairs therein treated concern the whole realm and their posterities. But if any of the charters have ensued since the summons of this Parliament and not before, it was but the omission of some of those that were long trusted with the expedition of that business, for the corporations of Ulster and others were set down, when the Lord Carew was here, by the King's own approbation. By like authority some other good plantations were thought meet to be incorporated in other parts of this kingdom; as the King's bounty is common to all. The election of quality attending the state, and of some clerks likewise, is no new thing, neither was it ever hitherto excepted against. The House is to judge of the miscarriage of the

sheriffs and abuses committed in the elections. Touching the ancient boroughs enabled to send burgesses, none are omitted to my knowledge. If any be, name them, and they shall have a writ of summons."

The extent to which the Irish House of Commons in the Parliament of 1613 was flooded with members in the interest of the Crown can be best realised by comparing the number of members constituting it with the number of members returned to the previous Parliament held in the twenty-seventh year of Queen Elizabeth's reign. In that Parliament there were represented, according to Sir Arthur Chichester's enumeration, only 36 cities and towns, which at the rate of two members each would give a representation of 72. From a document included in the Appendix to Dr. Lynch's "Feudal Baronies" we learn that there were 54 knights of the shire summoned to the same Parliament, thus giving a total representation in the Lower House of 126. During the period which elapsed since the summoning of this Parliament the number of counties had been increased

to 33. There would, accordingly, as Sir Arthur Chichester, the Lord Deputy, had enumerated, have been 66 knights of the shire and 152 members representing 76 cities and towns, making a total membership of 218, or nearly double that of the previous Parliament.

The hold of the Crown upon the province of Ulster was firmly secured by the network of towns planted throughout that province. In the other provinces the influence of the Crown was increased by the granting of charters to the "other good plantations" which were "thought meet to be incorporated." The form of civic government set up in these towns suffered from the same defect as the Ulster corporations. In all of them the chief powers were vested in a small body consisting of the chief officer and a number of "Free Burgesess" (usually twelve) while the general body of inhabitants received but insignificant powers. The Council of Thirteen ruled in each town and elected the Parliamentary representatives.

While the latter important function, namely, the election of members of

Parliament, was vested by charter in the chief officer and "Free Burgesses," the language of the charters would seem to imply that the general body of inhabitants were empowered to share to some extent in the civic government.

The charters granted by King James I. to the towns newly incorporated by him in the tenth year of his reign, forty in number, professed to incorporate all the inhabitants of the respective towns. But the function of admitting "Freemen," or members of the commonalty, was specially reserved to the provost or other chief officer of the corporation and the "Free Burgesses." The charters commonly granted that all the inhabitants within the district should be a body corporate, and in a subsequent clause declared, that "all the inhabitants, and so many and such other men whom the provost and free burgesses shall admit to the freedom of the borough shall be of the commonalty."

In the Report upon Municipal Corporations in Ireland published in the year 1835, it was stated that the ruling bodies of these

Corporations had almost uniformly acted upon this clause, as not giving to the inhabitants at large a right to admission, but as vesting in the chief officer and free burgesses a discretionary authority to bestow or withhold the franchise, and to determine who should be admitted, whether they were inhabitants or others.

The question of the validity of this construction of the charters was raised in a case which came before the Court of King's Bench in Ireland in the year 1824. A gentleman named Abraham Martin, a resident inhabitant of the town of Sligo, applied for a writ of *mandamus* for the purpose of enforcing his admission to the freedom of the borough, a right which he claimed under the charter of King James I. as an inhabitant. The court considered that it appeared from the evidence adduced that the members of Corporation had been uniformly elected by the provost and free burgesses; and as there was no precedent adduced of the admission of any person to the freedom of the borough as of right, by virtue of residence or inhabitancy, they

decided that the charter admitted of a construction consistent with the usage, and refused to grant a *mandamus*.

Thus, limited as were the rights conferred upon the freemen, or commonalty of the the towns incorporated by King James I., the exercise of those rights was still further restricted by the policy of the ruling bodies to a small number of the inhabitants. Notwithstanding that the "inhabitants" were expressly incorporated as a corporate body by the charters, the chief officer and free burgesses whose own powers depended upon those charters deliberately, and apparently in open violation of the terms of the charters, withheld from the general body of the inhabitants the exercise of any corporate rights. It can only be concluded that this policy was carried out by the connivance of the government.

The effect of the arrogation to the chief officer and free burgesses of the right to admit whom they pleased to the freedom of the boroughs was that the general grant of incorporation to the inhabitants was in effect annulled. In the course of time the

freemen as a constituent part of these corporations disappeared in many Irish towns—a result partly due to the policy of the chief officer and free burgesses of the towns in restricting admission to the freedom and partly to the apathy of the inhabitants in seeking to enforce a right which was of little practical value, as it conferred no voice in the election of the head of the corporation or of the governing body, nor in the election of the Parliamentary representatives.

Effect upon the Towns of King James's Religious Policy.

During the sixteenth century little progress was made in enforcing upon the Irish people the Parliament-made religion of the Tudors. The Oath of Supremacy was by law required to be taken by the holders of public office. Absentees from divine service as by law established on Sundays and holidays were liable to a fine of twelve pence for each offence of omission. Queen Elizabeth, or her ministers, acting in her be-

half, wisely refrained from the rigid enforcement of these penal acts in a country which had never yet been thoroughly reduced to subjection. The non-observance of the statutory requirements was connived at in the cities and towns.

When James I. ascended the throne of England, and *ipso facto* became King of Ireland, it was thought that the Catholic religion could be again openly practised in Ireland. But such was not to be. In July, 1605, a Proclamation was issued in Ireland in which the King declared his firm intention not to permit the exercise of any other religion than that which was "agreeable to God's Word, and established by the laws of the realm." He commanded all his subjects duly to resort to their several parish churches to hear divine service on Sundays and holidays under pains and penalties as by law established. All Jesuits, seminary priests, and other priests owing allegiance to the See of Rome were ordered to leave the Kingdom of Ireland before the 10th day of December following.

A few months later a second Proclamation was published by the authority of Sir Arthur Chichester, the Lord Deputy, and the Privy Council of Ireland in which more severe penalties were threatened for failure to attend the services of the established church.

Pursuant to this Proclamation mandates were issued in the King's name to sixteen of the chief aldermen and citizens of Dublin, requiring them to attend the Mayor to Christ Church to hear divine service and to present themselves there before the Lord Deputy and Council. The aldermen failed to attend, and accordingly were summoned before the Court of Castle Chamber, otherwise known as the Court of Star Chamber. On the first day nine of them were fined, six to the amount of £100 each, and three £50 each. They were further sentenced to remain prisoners in the Castle during the Lord Deputy's and the Court's pleasure. The remainder of the party were likewise fined and imprisoned during pleasure. Proceedings were instituted in the King's Bench against the

ordinary citizens for refusing to attend divine worship.

To reduce the commoners of Drogheda to conformity in religion a commission of Oyer and Terminer was granted to Sir John Davys and others.

In New Ross and Wexford fines were imposed for recusancy, or refusal to attend the Protestant service. In the latter town pressure had to be brought to bear upon the jury in order to obtain a verdict. "We were fain," said Sir John Davys, "to threaten them with the Star Chamber before they would return any presentment to us."

In Munster particularly severe measures were taken against the Roman Catholic recusants by direction of Sir Henry Brouncker, the Lord President of that province. Every town in Munster was visited by the Judges of assize, with whom Sir John Davys, the Attorney-General, was associated. And everywhere were the the people penalised for obeying the law of God as dictated to them by their conscience rather than that of the Parliament and King.

The Mayor of Cork, William Sarsfield, steadfastly refused to attend divine service in the established church when summoned to do so by the Lord President and Council. His refusal cost him £100. Heavy fines were likewise imposed upon other prominent citizens of Cork. The Mayor was deposed from office for refusing to take the oath of supremacy, an oath which no Catholic could take. For declining to deliver up the *insignia* of his office to the mayor elected in his place and neglecting to attend before the Lord President when summoned he was fined £500 and sentenced to imprisonment.

The treatment of the Mayor of Cork was that meted out to many another chief magistrate of the southern province. In a letter from the Lord President of Munster written from Waterford and dated September 12th, 1606, a copy of which appears amongst the State papers of James's reign, that officer stated that he had deposed all the mayors and sovereigns of the province, the town of Waterford only excepted (where the Mayor, Sir Richard Ayleward con-

formed) and Youghal which he declared he must take on his way homeward and execute the heaviest judgments on the mayor, "because he continueth longest in his wilfulness."

The severity of the Lord President of Munster was the subject of some correspondence between the Lord Deputy and the Lords of the Privy Council of England. In a letter of the Lord Deputy, dated August, 1607, the following passage occurs: "Many of the merchants, too, and other inhabitants of corporate towns, terrified as they pretended, with his (Sir Henry Brouncker's) course of proceeding, gave over their trades, and betook themselves into the country, openly professing that they would abandon their traffic beyond the seas rather than the President should be benefited by the impost on wines, and that they would incur any infliction of the law in that case rather than he should gain any glory or commendation in the work which he intended."

Notwithstanding the royal proclamation of July, 1605, and the further one published

by the authority of the Lord Deputy and Council in October of that year, little progress was made in the early years of King James's reign in promoting the new religion. In a letter dated the 27th day of October, 1607, from the Lord Deputy and Council to the English Privy Council the following statement occurs: "Most of the mayors and principal officers of cities and corporate towns and justices of the peace of this country birth refuse to take the oath of supremacy as is requisite by the statute. And for an instance, the party that should this year have been Mayor of Dublin avoided to his very great charges, only because he would not take the oath."

Catholic Dublin refused to yield without a struggle to the pressure that was brought to bear upon it in this all-important matter of religion. In the year 1613, as recorded in Lodge's "Desiderata Curiosa Hibernica," all the aldermen but one declined the office of mayoralty, as they could not take the oath of supremacy. The individual who finally accepted the office of Mayor was a young man lately elected alderman. In

administering the oath to him, Sir William Methuen, the Lord Chief Baron, observed that he had leaped a salmon-leap, for that he saw many grave and gray-headed men there standing about him, whose turn was to have been mayors before him, but that they would not take the oath of supremacy, which he was sorry for.

No Irish city, however, seems to have suffered so much during the Stuart period for its adherence to the Catholic religion as the city of Waterford. Waterford was a city which had had a tradition of practical independence for centuries. During that period its civic rulers had upheld its dignity, ruled well and wisely, and defended it against its enemies. Under the Tudors its independence was curtailed and the religion of the citizens placed under a ban. But the proud spirit of the men of Waterford was not broken.

Shortly after the accession of King James, Lord Mountjoy, the Lord Deputy, appeared before the gates of Waterford with a large force, his purpose doubtless being to secure the interest of James in that important

city. The citizens, however, although professing their willingness to admit him and his retinue, refused to admit his army, alleging that it was contrary to their chartered rights to do so. The arbitrariness of the rule which was now ushered in is well exemplified in the answer sent back to the citizens by the Lord Deputy, namely, that with King James's sword he would cut King John's charter; he would ruin their city and strew it with salt.

The proclamation of the accession of King James was violently resisted by the citizens. In the Calendar of the Carew MSS. appears a document recording the refusal of Cork and Waterford to proclaim James as lawful king. After dealing with the open rebellion of Cork, the document continues: "The town of Waterford was no less perverse, for they pulled down Sir Nicholas Walshe, Chief Justice of the Common Pleas, from the Cross in the town when proclaiming the King's titles to these dominions and would not suffer him to proceed. They allowed their priests to set

up the Mass, and one Doctor White made a public sermon, that now they might thank God that every man might freely enjoy the fruits of his own reward, sit under his own shop, where before all things were extorted from them by the rapine of the soldiers, that none could say this was his own ; for now Jesabell was dead."

Notwithstanding mandates of the Lord President of Munster sent to the chief citizens and the imposition of fines under the Statute of 2° Elizabeth the inhabitants failed to conform to the new religion. And for their devotion to their religion the citizens paid the highest price possible, all their liberties, rights and franchises were seized into the King's hands and the civic government overthrown. The State papers of the period record that at Michaelmas in the year 1615 Nicholas White FitzWalter, alderman of the city, was elected mayor of Waterford and took the mayoral oath. He acted in the office until the 20th day of October following when the Earl of Thomond, Lord President of Munster, tendered to him the oath of supremacy mentioned

in the Statute of 2° Elizabeth. The mayor refused to take the oath and thereupon forbore to exercise the duties of the office. His successor, John Skiddy, likewise refused to take the oath and yielded up the mayoralty. A third mayor, Alexander Duff (or Cuffe), acted similarly. In April, 1617, it was found necessary to seek a mayor outside the ranks of the aldermen and one Walter Cleere who had never borne office and was not even a member of the Common Council was elected and took the oath of mayoralty. His fate is not stated, but he probably acted as his predecessors had done, for in this year the liberties of the city of Waterford were seized into the King's hands. It was not until the reign of Charles I. that civic government was restored in Waterford. The citizens recovered their ancient rights and liberties on payment of a fine of 20,000 marks to the King.

In Gale's "Ancient Corporate System of Ireland," a valuable and trustworthy work, it is stated that within two terms the mayors and officers of fourteen cities

and towns were proceeded against, heavily fined, and punished in the Court of Castle-chamber, for acting in their offices and refusing to take the oath of supremacy. The fourteen cities and towns were Dublin, Kilkenny, Thomastown, Gowran, Inistioge, Cork, Limerick, Waterford, Naas, Fethard, Clonmel, Kilmallock, Drogheda and Dundalk.

Such were the measures taken in Irish cities and towns for the furtherance of the established religion. Under such a system of religious intolerance civic government in Ireland as it had heretofore existed became impossible. A fatal blow was struck at the principle of self-government. No longer could the inhabitants of Irish corporate towns be ruled by men who were bound to them by the intimate tie of religion, and who represented the wealth, intelligence and dignity of their towns. Public men were hounded out of civic life in Ireland for daring to profess the religion of their fathers—the religion which their conscience told them to be the only true one—and their places were taken, by the

craven hearted or the stranger. The disastrous effect upon the good government and welfare of the towns can easily be imagined. In a report presented by commissioners appointed in the year 1622 signed amongst others by Lord Falkland, the Lord Chancellor, and referred to in Gale's "Ancient Corporate System of Ireland" the following statement occurs:—"Poore men that will take the oath of supremacy are made chief officers in all the citties and townes, and the rich men being recusants never employed to any such offices, which bringeth the townes into contempt and causeth trade to decay."

The effect produced upon civic government in Ireland by religious persecution and by the restriction of the general body of the inhabitants from an effective share in the government of their towns was disastrous. The evil was a cumulative one and went on increasing, generation after generation, until civic government in Ireland became a negation of every principle of self-government.

Increase of Revenue from Irish Towns.

In another important respect were the ancient cities and corporate towns of Ireland affected by the change of dynasty in England, namely, in their revenues. Customs dues leviable under their charters or by usage formed an important item of civic revenue. It was a moot point whether certain of the customs dues levied were legally due to the Crown or not. James I. was not a Sovereign likely to leave the matter long in doubt. In February, 1607, he sent instructions to Sir Arthur Chichester, directing him to summon before certain members of the Council all persons with their charters, grants and evidences whereby they challenged a right to receive any moneys for customs, impositions, or levies upon goods or wares imported or exported, or any exemptions from payment of customs or duties. Their charters and other documents were directed to be delivered up to the Lord Deputy and Council for perusal.

The next step was the issue of an order to the corporate towns to send over their charters to England, for examination as to the validity of the claims made thereunder. The Commissioners who examined the claims issued a certificate to the effect that all the ancient customs paid within the ports of Ireland and the subsidy of twelve pence in the pound were due to the King by the laws of that realm—the freemen of the ports of Dublin, Waterford, Drogheda and Galway alone being exempt from payment of the said subsidy.

Accordingly a book of rates was prepared and sent to Ireland and instructions issued for the appointment of a competent number of fit persons in every port to collect the customs to the King's use. In order to advance the King's revenue, and to preserve the balance of trade between the various ports of Ireland—it was suggested in the instructions issued by the King that there should be raised upon the merchandise imported or exported by the freemen of the said four ports so much by way of impost as the freemen of the other ports

paid for subsidy, which might be done by virtue of the royal prerogative.

In this way King James succeeded in increasing his revenue from Irish towns. Under the cloak of legality he compelled them to yield up the customs to him. At the same time he took advantage of the opportunity to grant new charters to many of the ancient towns of Ireland whereby he restricted the chief functions of government to a select body of burgesses. In some cases the chief officers and members of the Common Councils were nominated by charter thereby establishing governing bodies favourable to the royal interest.

CHAPTER X.

The Restoration Period.

Under King James's successor little change took place in municipal government. A certain amount of religious toleration was purchased from King Charles, as were the other "graces" obtained from that monarch. Only one new corporation was created in this reign, that of Banagher.

In the Cromwellian period Irish towns suffered much moral and material damage. Town after town fell into the hands of Cromwell's army. Many of the inhabitants were dispossessed of their property and driven from their places upon the Common Councils.

With the Restoration of the Stuart dynasty a new problem presented itself—that of reconciling the rights of the Cromwellian soldiers who were in possession of lands and tenements in the cities and towns of Ireland with the claims of the dispossessed inhabitants and of the Catholic population

of the towns who had adhered to the Stuarts during the war in Ireland.

The State papers of the Restoration period contain several references to petitions of the dispossessed inhabitants of Irish towns for the restoration of their former rights and privileges and to the orders made thereon. In August 1660, the ancient inhabitants of Cork, a city which had taken no part in the rebellion of 1641, were ordered by King Charles II. to be restored forthwith to their lands and to their ancient corporate privileges. In a letter from the King to the Lords Justices of Ireland dated 14th February, 1661, which recited that the inhabitants of Youghal had remained constantly loyal to the Royal cause during the recent disturbed period and had been deprived of their estates in the town and without by "the late power," merely because they were Papists and Royalists, it was ordered that their estates and ancient liberties should be restored to them and that the natives and inhabitants might freely and indifferently without contradiction live,

trade and inhabit together with the Protestant inhabitants then dwelling in the said town without any distinction.

A special order to a similar effect was made with reference to the ancient natives of Drogheda and its liberties of the Roman Catholic religion against whom no charge of disloyalty before the year 1647 could be proved.

In May, 1661, a general direction was issued by the King to the Lords Justices of Ireland concerning divers of his subjects who had formerly lived in Limerick, Galway, and other towns but had been expelled therefrom, and were still by reason only of their race and religion prevented from returning there. This His Majesty stated was bad for trade, as it drove many traders abroad, where they engaged in trade to the enrichment of foreign Princes. Accordingly it was ordered that those who had formerly the right to trade in those parts should continue to have that right and " without making any national distinction between our subjects of that our kingdom or giving any interruption upon pretence

of difference of judgment or opinion in matters of religion, but that all act and deal together as becometh our loyal and dutiful subjects." The mayors, sheriffs, and other officers of cities, towns and corporations were directed to take notice of the order, which was to be published in their respective cities and towns.

The desire of the King to do an act of bare justice by the restoration to their homes of the inhabitants of the cities and towns of Ireland who had been expelled therefrom was deliberately ignored by the Lords Justices. They apparently feared that the publication of the order would lead to the repeopling of the cities and towns by a Catholic population and that the Common Councils and civic magistracies would again be filled by those professing that religion. Nothing was done on foot of the Order, but representations were made to England against any such restoration to power of the hated Papists. These representations found favour with the English Privy Council. On 13th August, 1661, the following answer was sent by the Privy Council :—" The

King approves of what you have done for the peace and order of that Kingdom, and thinks you have very circumspectly followed your instructions in the matter of the King's letter of 22nd May last. We have considered it, and it was right of you to delay executing it. The letter in question was grounded upon the express desire of some of the King's Popish subjects there who say that they are not allowed to traffic there 'only for difference of nation and religion.' There was not at any time an idea that all Popish natives and freemen generally should be restored to the cities and towns, whatever part they may have taken in the late rebellion. Such a request would, of course, have been rejected."

To remove any possible doubt as to the rights of the Roman Catholic population to be restored to civic office, Sir Edward Nicholas, the Secretary of the English Privy Council, stated in his covering letter: "The King hath declared at the Board that his Majesty did not intend by his letters of the 22nd of May last to restore

them further than to trade and traffique and not to establish them in any privileges relating to magistracy or government in any towns, neither (for ought I hear from some of the chief Irish papists who are here) did they desire more than to have liberty to live and traffic in Ireland."

Thus whatever hopes the former Catholic inhabitants had of being restored to their rightful places in the government of their towns and in the civic offices were completely taken away. It is interesting to note that in the State papers of the period the terms "Native" and "Papist" and "race" and "religion" are constantly bracketed together. Did the old colonists of Catholic stock who remained faithful to their religion, and there must have been many such, completely lose their identity? Or were they regarded as having forfeited all claim to consideration and accordingly reduced to the level of the "mere Irish," for adhering to the ancient religion of Ireland? Such seems to have been the attitude of the English governors towards them.

The "New Rules."

While the old Catholic inhabitants were precluded from any share in civic government and were merely allowed on sufferance "to trade and traffic" in the towns, the freedom of the towns was thrown open to all foreigners or strangers who should choose to seek it. Under the Act of Explanation passed in the year 1665 the Lord Lieutenant and Council were empowered during a period of seven years to make and establish rules, orders, and directions for the better regulating of all cities, walled towns, and corporations in Ireland, and the electing of magistrates and officers therein.

In pursuance of this Act regulations known as the "New Rules" were made for Irish corporate towns. Special regulations were made for Dublin, Drogheda, Limerick, Galway and other important towns, and general regulations for the rest.

One of the most important of the "New Rules" was a general provision made for encouraging foreigners to become inhabit-

ants of Irish corporate towns. The Lord Lieutenant and Council proclaimed that all foreigners, strangers, and aliens, as well others as Protestants, who were or should be merchants, traders, artisans, artificers, seamen, or otherwise skilled and exercised in any mystery, craft, or trade, or in the art of navigation, then residing or inhabiting (within the cities or towns of Dublin, Drogheda, Limerick and Galway, as to those Corporations, and within the kingdom of Ireland, as to all other cities and towns), or who should thereafter come into the said several cities and towns with intent and resolution there to inhabit, should, on request, and payment of twenty shillings by way of fine to the chief magistrate and common council, or other persons authorised to admit freemen, be admitted freemen of the town ; and, if desired, of any guild, brotherhood, society, or fellowship of any trade, craft, or mystery within the same, during residence for the most part ; and the persons so admitted were thenceforth to be deemed denizens within the kingdom.

Perhaps the most important of the " New Rules " from the point of view of the government was that which provided that the names of the mayor or other chief magistrate, sheriffs, recorder, and town clerk of Irish corporate towns should be submitted for approval to the Lord Lieutenant and Privy Council of Ireland. This regulation gave the government complete control over the appointment of these important officers throughout Ireland. If the Lord Lieutenant and Council declined to approve of those elected to these offices, further choice had to be made until their approval was obtained.

These " New Rules," made under statutory authority, were a serious encroachment upon the chartered rights of the old corporations. Freedom of choice in the selection of the mayor or other chief officer had already been curtailed by the restriction of the chief magistracy to those willing to take the oath of supremacy. The further condition was now imposed that the nominee of the electors should be a *persona grata* to the Government. The same re-

strictions applied to the sheriffs, recorders and town clerks. With the control thus secured over the corporate towns of Ireland, the Government had little occasion to fear a display of independent spirit in the old corporate towns such as had marked their history on many occasions in the past.

The provision with regard to the admission of freemen, while it may have been necessary with a view to the repeopling of towns, the inhabitants of which had been decimated by war, famine, and pestilence or expelled from their homes, was nevertheless an encroachment upon a privilege hitherto highly and perhaps too jealously cherished by the municipal corporations and the trade guilds.

The " New Rules " made for Drogheda, Limerick, and Galway provided that the election of all corporate officers should be restricted to the Common Councils of those Corporations, thereby implanting in these ancient corporations the fatal principle of self-election which was such a prominent feature of the corporations created by King James. It was further provided that no

matter should be debated in any general assembly therein until it should have first passed the Common Council.

The influence of Charles II. in Ireland was still further increased by the incorporation of fifteen new boroughs which supplied thirty additional members in the interest of the Crown in the Irish House of Commons. The charters granted by King Charles were modelled upon those issued by James I. Fifteen additional close boroughs were thus created. They were :—

Baltinglass	Dunleer	Middleton
Blessington	Granard	Portarlington
Cariesfort	Harristown	St. Johnstown
Castlemartyr	Lanesborough	Hillsborough
Charleville	Longford	Tulske

CHAPTER XI.

The Era of Municipal Misgovernment.

The history of Irish municipal corporations during the century and a half which extended from the close of the Stuart period to the reform of those bodies in 1840 is one long, sordid story of misgovernment, corruption, jobbery and intolerance, all of which defects were directly traceable to the evil influences set at work during the Stuart period.

In the new corporations established by King James I. and his successors there was no possibility of a useful career of municipal government when the vital principle of self-government was absent. The inhabitants of these towns received under their charters of incorporation no effective share in municipal government. The general body of inhabitants, or the commonalty, as they were called, were indeed included as an integral part of the

corporate body. But the conduct of affairs and the selection of the mayors, sheriffs, and other important officers were vested in small select bodies usually consisting of about twelve individuals, called "Free Burgesses," together with the Mayor or other chief officer. This select class was endowed with the power of filling vacancies in their own body by co-option. The mayor and sheriffs were elective annually, but the "Free Burgesses" held office for life. The power of removal of a "Free Burgess" for misconduct was vested in his fellows, but that power must seldom or never have been exercised. It may be considered that the representation in the Irish Parliament of these corporate towns was a matter which concerned the general body of inhabitants. The framers of the charters, however, considered that the right of election of Parliamentary representatives should be vested in the chief officer and "Free Burgesses" alone. The rights of the commonalty were as a rule confined to a share in the election of inferior officers and in the making of bye-laws.

The real *raison d'etre* of the new corporations was, as has been explained, for the purpose of creating a body of members in the Irish House of Commons in the interest of the Crown, and not for the purpose of establishing a useful system of municipal government for the inhabitants of the places incorporated.

The select governing bodies thus set up in a large number of Irish towns were completely irresponsible. They rendered no account of their actions to the general body of inhabitants. Municipal affairs were neglected or attended to according to the whim of a few individuals. Where attention was paid to them it was solely with a view to the interest of the governing class. Corporate appointments, even inferior ones, were confined to the members of that class or to their families and friends. Corporate property became diverted from its proper end, and in only too many cases passed into the hands of the "Free Burgesses" themselves. In many of these corporate towns complete control of affairs and property passed into the hands of one individual

or family, and that influence became perpetuated from generation to generation. Where such dominion over the affairs of a town was exercised by an individual, he was generally called the "Patron." The first "Patron" of a borough was usually the patentee of lands adjoining, or the lord of the manor upon which the town was erected, or a wealthy land owner of the neighbourhood. The "Patron" ordinarily nominated the members of the Common Council or governing body of the town as well as the chief civic functionaries. His nominees were returned to the Irish House of Commons, by the Chief Officer and free burgesses, the creatures of the Patron. Many corporations were kept in existence solely for the purpose of returning members to the Irish Parliament.

The condition of the older corporations, some of which had a history extending over centuries, gradually approximated to that of the newer ones established by King James I. and Charles II. In the older towns the Common Councils became composed of cliques of individuals or families

who endeavoured to render their corporations as close as those of the towns of modern growth. This they did by excluding as rigorously as possible the general body of inhabitants from admission to the freedom of the towns.

In some of the older corporate towns certain rights to admission as a freeman or member of the corporation were acknowledged to exist. Being the son of a freeman, being married to the daughter of a freeman, or having served an apprenticeship to a freeman were the usual titles to freedom recognised. In Dublin, Limerick, Waterford and a few other towns the rights of birth, marriage, and apprenticeship were recognised. In Wexford the right of apprenticeship was the only right recognised at the close of this period. In Bandon the eldest son of a freeman was alone recognised as entitled to the freedom of the town. In Dublin a candidate for admission to the freedom of the city had first to seek admission as a member of one of the incorporated guilds and then apply to the Common Council. In the year

1835 when an inquiry was made into the state of municipal corporations in Ireland the Commissioners who conducted the inquiry reported that there was no general, absolute and uniform right to admission into the municipal corporations. Nowhere did they find the qualification of being an inhabitant, or householder, recognised as an available title to the corporate franchise.

The rights from birth, marriage and apprenticeship had, they said, even where most liberally admitted, failed to supply in the body of the Corporations a general constituency, comprising, or representing sufficiently, the various classes of the inhabitants. The two former qualifications confined the persons eligible to those related to or connected with the old members, while the third, that of apprenticeship, left to the old members complete control as to the class from which the new members might be selected ; thus, when a particular party had gained the ascendancy in any corporation, these rights operated to preserve the corporate privileges to that class

exclusively. Even where these rights to admission were recognised, it was the policy of the governing bodies to place obstacles in the way of attaining the freedom.

In the Corporations created by King James I. the power of admitting to the freedom of the towns was vested in the chief officer and free burgesses. In the older corporate towns the Common Councils appear to have early acquired the privilege of deciding on the merits of the claims to freedom, and of granting or withholding admission. They exercised also, without limit as to numbers, the power of admitting whom they pleased, by what was termed "special grace."

"Possessed of these powers," the Commissioners stated, "the governing bodies have too commonly used them, without scruple, not as trusts to be exercised for the benefit of the community, but as the means of attaining for themselves an exclusive dominion over the general inhabitancy, and political influence in the election of Members of Parliament. The course which they seem to have almost universally

pursued for this object has been to concede, with the utmost parsimony, to the inhabitants the right to become members of the Corporations as freemen."

In Bandon, Naas, Youghal and some of the smaller corporations the power of admission to freedom remained vested in the general corporate bodies of those towns, but with little practical difference in favour of the general body of the inhabitants, as the corporations were under the control of patrons, on whose will depended the admission or rejection of candidates for freedom. The corporation of Trim, although in constitution apparently free, was in reality, from the sectarian principles upon which its members acted, practically close and exclusive. The corporation of Carrickfergus presented a remarkable contrast to the other corporations in the number of its freemen. According to the Local Report upon that town freemen had long been admitted there in numbers, and in a manner almost amounting to universal suffrage.

The Reform Act of 1832 caused the governing bodies of Irish towns to recon-

sider their attitude towards the admission of freemen. An enlarged leasehold and household constituency was introduced by that Act. As a counterpoise to the new Parliamentary voters, the common councils in many instances found it desirable to extend more liberally the corporate franchise. In Clonmel, we are told, rights to freedom, not recognised for eighty years prior to that Act being passed, had been since admitted. In Kinsale and Athlone freemen were admitted in large numbers in the year 1831 for the same purpose, but this attempt was defeated by the clause in the Reform Act which excluded honorary freemen admitted subsequently to the 30th of March in that year.

While the admission of freemen by right of birth, marriage, or servitude was rigidly restricted in the older corporations previous to the Reform Act of 1832, there was no limit to the admission of freemen by "Special Grace." The power of admission by special grace could always be used, and was in fact used, to counteract any increase on title supposed to be dangerous to the

prevailing influence. The existence of this power in the hands of the governing bodies of the towns was one of the gravest defects in the constitution of Irish corporate towns during the eighteenth and early nineteenth centuries. Its exercise led to the complete negation of every principle of municipal government. Finally it led to the overthrow of the whole Irish corporate system.

The power of admission by special grace was particularly directed against a special class of inhabitants in counties of cities and counties of towns, namely, the freeholders in those Irish cities and towns which under their charters were made separate counties. The freeholders exercised the most important civil right, that of voting at elections for members of Parliament, without control of the corporate authorities. Having this right, they had little reason to seek for admission to the freedom of the corporate towns. But their very existence had a decided though indirect tendency to depress the freemen as a class. The existence of the freeholders, with independent voting power in the

election of members of Parliament, led to the creation of non-resident freemen for the purpose of counteracting that influence. The Municipal Commissioners in their general report issued in the year 1835 state as follows :—" In many corporations (we may instance those of Galway, Limerick, Cork and Drogheda) the creation of non-resident freemen has prevailed to an extent apparently only limited by the necessity of providing a sufficient number in the interest of the Corporation to bear down the resident freehold constituency." The Reform Act of 1832 contained a provision to check this practice.

The admission of non-resident freemen was a practice completely at variance with the principle of municipal self-government. The charters by which the system of municipal government was established and developed in Ireland professed to confer numerous rights and privileges upon the inhabitants of the incorporated districts, while at the same time imposing restrictions upon strangers. The inhabitants were granted the right of managing their own

affairs, electing their own officers and making bye-laws for the regulation of the municipal district and for the conduct of municipal affairs. In all cases the principle of residence as a condition precedent to the enjoyment of the rights and privileges granted by the charters was clearly recognised. As early as the reign of Henry VII. this principle of habitancy was recognised and enforced by the Irish Parliament which enacted in the year 1495 "That no City or great Town receive or admit any person to be Alderman, Juror or Freeman, within any of the said Cities or Towns, but such persons as have been prentice or been continually inhabitant in the said Cities or Towns." Even in the charters granted by James I. to the places newly incorporated by him it was granted that all the inhabitants should form a body corporate, and that the commonalty should consist of all the inhabitants and so many and such other men whom the provost and free burgesses should admit to the freedom of the borough.

Notwithstanding the spirit of the charters

and the provisions of the Act referred to, the governing bodies of Irish corporate towns, old and new, excluded the general body of the inhabitants from their chartered right of admission to the freedom of the towns, and admitted aliens who had no interest in the welfare of the municipalities. The results of such exercise of the power of admission to the freedom of Municipal Corporations in Ireland cannot be better described than in the words of the Municipal Commissioners of 1835. "It has followed," they said, "that in many towns there is no recognised commonalty; that in others, where existing in name, it is entirely disproportioned to the inhabitants, and consists of a very small portion, of an exclusive character, not comprising the mercantile interests, nor representing the wealth, intelligence, or respectability of the town. The corporations are, not without reason, looked on by the great body of the inhabitants of the corporate districts with suspicion and distrust, as having interests distinct from and adverse to those of the general community, whom they thus

studiously exclude from a participation in the municipal government. Their members frequently consist entirely of the relatives and adherents of particular individuals or families, and the principles of their association, and those which regulate admission or exclusion, have rarely any connexion with the common benefit of the district, or the wishes of its inhabitants. In far the greater number of the close Corporations, the persons composing them are the mere nominees of the 'Patron' or 'Proprietor' of the borough; while in those apparently more enlarged they are admitted and associated in support of some particular political interest, most frequently at variance with the majority of the resident inhabitancy."

Exclusion of the Roman Catholics.

The system of municipal government which obtained in Ireland from the close of the Stuart period to the reform of corporate government in Ireland operated with peculiar hardship in respect to an

important section of the urban population, namely, the Roman Catholics. Excluded from the higher corporate offices by the religious policy of the earlier Stuarts, they were under Queen Anne completely debarred from membership of municipal corporations. Until near the close of the eighteenth century the Roman Catholic population were excluded from any share in municipal government. In most of the towns the Roman Catholics formed the majority of the population and were a large proportion of the wealthier class. In addition to corporate office, the administration of local justice and the selection of juries were completely in the hands of members of a different religious persuasion, with the result that both municipal government and the administration of justice were regarded with distrust and suspicion by the Roman Catholic population.

One result of the exclusion of the Roman Catholic population from a share in municipal government was that in many of the towns it became difficult to find resident Protestants of sufficient standing to fill

offices of importance, and accordingly strangers were appointed in defiance of both law and charters. The political spirit of the times, however, induced the Irish Parliament to legalise this illegality by the statute 21 Geo. II. c. 10, which enacted "that no person who had been or should be in all other respects duly elected and admitted into any of the said offices or franchises in any town corporate or borough not being a city should be ousted out of any such office or franchise as aforesaid, or be any ways sued, prosecuted, or molested for, or by reason only of his not being an inhabitant of, or resident within, said town corporate or borough, at the time of his election, but should hold, exercise, and enjoy such office or franchise as fully and effectually to all intents and purposes as if such person or persons was or were inhabitants of, or resided within such town corporate or borough at the time of election."

The effect of this enactment was to deprive a vast number of the corporate towns of a resident governing body. In some

of the towns a few of the members continued to be resident, in others the whole body of burgesses consisted of non-residents, a few of whom attended on occasions of elections of members of Parliament or municipal officers or of the disposition of corporate property, but in no other way interfered in municipal affairs.

In the year 1793 the Irish Parliament under the influence of Grattan repealed the Acts which excluded Roman Catholics from admission to municipal corporations. Strange as it may seem, the Act of 1793 conferred little benefit upon the professors of the Catholic religion. Eligible for admission though they now were, they had none of the requisite titles. They were not the sons of freemen, they were not married to daughters of freemen, nor had they served an apprenticeship to freemen. For the Roman Catholics of that generation and indeed of the next the Act was practically a dead letter. In the close corporations they still continued to be excluded. In many of the older corporations, their admission as freemen was openly resisted on

sectarian principles. In few of the corporations did they succeed in gaining admission to the governing bodies.

At the period of the inquiry into the state of municipal corporations in Ireland, it was found that the Roman Catholics were still excluded from their proper share in the government of Irish cities and towns. In one corporation alone, that of Tuam, was the majority of the governing body composed of Roman Catholics. In the greater number of corporate towns, the rule was still exclusion. Until the old corporations were abolished, and a new system of municipal government set up, they had no chance of fair treatment. The Commissioners in their Report to the King submitted that a system of municipal polity which excluded such a class of His Majesty's subjects from all substantial corporate privilege and power, must be essentially defective in its structure.

Privileges of Freemen.

Before leaving the subject of freemen it is necessary to state what were their rights

and privileges at this period. Both in the old and in the new corporations they were entitled to join with the other members in the enactment of bye-laws. In a few corporations they shared in the general administration of corporate affairs and property either through their representatives on the Common Councils, or else by having the previous acts of the Common Councils submitted for their approval in their general court, known as the "Court of D'Oyer Hundred" or "Tholsel Court." Under the "New Rules," it may be remembered, it was provided that no matter should be debated in any general assembly in Drogheda, Limerick, or Galway until it should have first passed the Common Council of those towns. To influence opinion in the freemen's courts the members of the Common Councils were in the habit of attending and voting as freemen, a practice resented and complained of by the ordinary freemen.

In the older cities and towns the freemen were entitled to vote for members of Parliament. Freemen of those places re-

tained this right under the Reform Act of 1832, subject to the provisions of that Act as to residence and otherwise.

Chief amongst the privileges of freemen was their eligibility to corporate office. In the close corporations this qualification counted for little as the nominee of the governing body or of the " Patron " of the borough could always be made a freeman first, and then appointed to office.

For the ordinary freeman the privilege of greatest material value was his freedom from the payment of municipal tolls and customs. The very existence of this privilege gave the governing bodies of Irish towns additional interest in restricting admission to freedom. This selfish policy on the part of the governing bodies tended to add to their unpopularity amongst the general body of the inhabitants who considered themselves unjustly excluded from the advantages possessed by a few members.

In some of the corporations the freemen enjoyed special privileges with regard to the corporate property. Thus in Drogheda freemen were, until the year 1833, alone

permitted to become tenants of the corporate estates, and were considered entitled to a renewal of their leases on specially favourable terms. In Kells and Trim tracts of land in the possession of the corporations of those towns were divided into certain portions, and alloted to members.

In Limerick the widows of aldermen and burgesses were entitled to pensions or annuities.

In Drogheda the distribution of certain charitable funds vested in the corporation was confined, with scarcely an exception, to freemen and their families.

Some of the ancient privileges of freemen, such as the exclusive right of trading (generally as a member of the merchant guild of his town) and the right of freedom from tolls and customs throughout the King's dominions had at this time fallen into desuetude.

Representation of the Freemen on the Common Councils.

In the greater number of the corporations created by James I. the freemen were un-

represented on the Common Councils, the "Free Burgesses" of those corporations having assumed the entire control of corporate affairs. In Dublin there were 96 representatives of the freemen on the Common Council. These representatives were not elected directly, but through the medium of the guilds of trade, of which there were twenty-five. In Drogheda the guilds of trade returned 14 members to the Common Council. These seem to have been the only examples in modern times in which the trade guilds of Irish towns shared directly in municipal government. In Bandon, or Bandonbridge, to give it its old name, the freemen elected 12 of the Common Council. In Ardee where there were 24 burgesses, a select body, composed of 6 burgesses and 6 freemen, was elected by the corporation at large. In Kinsale the commonalty were represented by a single individual called "the Common Speaker." In other corporations the freemen had only a nominal representation, their places on the Common Councils being filled by nominees of the superior classes of the

corporations, or by the Common Councils themselves. Thus in Kilkenny where there were 18 aldermen (who elected to their own body) there were 36 common councilmen who were elected by the aldermen and common councilmen; and in Waterford where there were 19 aldermen and 21 assistants or common councilmen, the entire Council elected the aldermen from the assistants, and the assistants from the freemen.

Effect upon the Irish Parliament of the Municipal System.

The history of the Irish Parliament during the seventeenth and eighteenth centuries has often puzzled students of Irish history. Many of the enactments of that Parliament, a Parliament of a country which was supposed to have a constitutional form of government, have been read with surprise and disgust. The penal legislation against Roman Catholics was intelligible in a period when religious intolerance was rampant. But the suicidal legislation which destroyed

the trade and manufactures of Ireland, legislation such as that which crippled and destroyed the great woollen industry of Ireland in the closing years of William III.'s reign, has given just cause for wonder. The whole history of that Parliament is illumined when read in the light of Irish municipal history. Leaders of industry and wealthy merchants, men whose prime interest it was to secure favourable commercial legislation in the Irish Parliament were driven from posts of honour in Irish towns and from control of municipal government for daring to profess the Roman Catholic religion. These men who would have been the natural representatives of their towns in Parliament were declared incapable of holding even municipal office. The Roman Catholics who formed the majority of the urban population were thus ousted from both Parliamentary and municipal representation. At the same time the country was planted with numerous petty boroughs with close corporations, each returning two members to Parliament. These new corporations fell completely

under the control of a few great landowners, whose nominees were invariably returned to Parliament. In the older towns the Parliamentary representation fell into the hands of small cliques of an exclusive political and sectarian character. In the eighteenth century when in England, Walpole could say " Every man has his price," the state of political morality in Ireland was at least as bad, and probably a great deal worse. The enormous influence wielded by the Irish Privy Council, then the abject slave of the Privy Council of England, in the distribution of patronage and social and pecuniary bribes, had a demoralising, disastrous and destructive effect upon the Irish Parliament. The Privy Council of Ireland could cause to be introduced and to be passed any legislation dictated to it from across the water. There was indeed a party of brilliant, patriotic, and far-seeing Irishmen in the Irish Parliament of the eighteenth century, but they were hopelessly outnumbered. They did indeed for a time succeed in gaining a victory, when they secured in 1782

an independent Irish Parliament. But the victory was shortlived, and the Parliament was only nominally independent. The executive government which should have been the servant of that Parliament was in reality its master. The heads of that executive, by open and private bribery, by every means that political chicanery and a corrupt political morality could suggest, succeeded in causing the Irish Parliament to sell the birthright of the Irish nation. And so the Act of Union was carried.

Disappearance of Municipal Corporations.

One effect of the Act of Union upon municipal corporations in Ireland was the disappearance of a large number of them. The fact is eloquent. Their *raison d'etre* in a great many cases had ceased to be. They had been maintained for the sole purpose of enabling their "Patrons" to return their nominees to the Irish House of Commons. When the Irish Parliament met its inglorious end, the purpose of many

municipal corporations had been served, and they were allowed to disappear regardless of the interests of the inhabitants who were supposed to have been represented in Parliament. Part of the bargain out of which arose the Act of Union was the payment of £15,000 apiece to the Patrons of the boroughs which henceforth lost the right of Parliamentary representation. The money which by a strange piece of irony was paid out of the revenues of Ireland helped to bolster up the tottering fortunes of many a noble house and enabled the heads of those houses to maintain for a time the dignity of their newly added honours.

It is interesting to record the names of those places in which municipal corporations became extinct subsequent to the date of the Act of Union. They were :

Castlebar, Ballinakill, Dunleer, Ballyshannon, Carrick-on-Shannon, Knocktopher, Roscommon, Askeaton, Blessington, Banagher, Philipstown, Newcastle (near Lyons), Limavady, Gowran, Granard, Donegal, Lanesborough, Athboy, Killibegs,

Fethard (Wexford) Jamestown, St. Johnstown (Longford).

And the following villages:—Augher, Bannow, Cariesfort, Fore, Harristown, Old Leighlin, St. Johnstown (Donegal) and Tulske.

Of these thirty municipal corporations twenty had been created by James I. or his immediate descendants.

Great hardship was occasioned to the inhabitants of the corporate towns in which the municipal corporations became extinct. The regulation of markets, weights and measures, and other matters of local importance, remained almost wholly unattended to. The provisions of those Acts of Parliament which were to be carried into effect by the chief magistrates of corporate towns were as a result of this defect inoperative in those places.

A few municipal corporations which lost the right of Parliamentary representation continued to exist subsequent to the Union. They were those, according to the Municipal Commissioners of 1835, where the administration of corporate property, and the

emoluments of corporate office, were of sufficient importance, either in profit or influence, to make their retention an object of consideration.

The Act of 1828.

The early part of the nineteenth century found the whole system of municipal government in Ireland in a parlous state. The Common Councils cared little for the welfare of the towns under their control. Nowhere were municipal affairs properly attended to. A state of neglect, either absolute or partial, was everywhere the rule. Corporate property and corporate revenues were disappearing and no account of them was rendered to those for whom they were held in trust. From time to time in the case of individual towns the Legislature was forced to intervene by the passing of local acts for the better government of those towns. At last matters became so bad, and the need for redress so urgent, that it became necessary to pass a general Act to provide for the conduct of certain necessary local affairs.

This Act (9 Geo. IV. c. 82) was entitled "An Act to make provision for the lighting, cleansing, and watching of Cities, Towns Corporate, and Market Towns in Ireland in certain cases." It empowered those who were vitally interested in these important matters, namely, the inhabitants, to elect a body of local commissioners, resident in the town, for the purpose of carrying the Act into effect. The necessary funds for the lighting, cleansing, watching, paving, and improving of the town were to be provided by rates levied upon the inhabitants. The limits of the town were to be fixed by the Commissioners. All the inhabitant householders occupying houses rated at £5 per annum and upwards were entitled to vote for the commissioners. The latter who were required to be occupiers of houses valued at least at £20 per annum were to hold office for three years and be eligible for re-election.

This Act was eagerly welcomed and was ultimately adopted in no less than sixty-five towns. The fact that the British Parliament had to pass an Act to provide

for the performance by commissioners voluntarily elected by the inhabitants of Irish towns of the elementary duties of the governing bodies of those towns was a striking commentary upon the state of ineptitude into which those bodies had fallen in the early nineteenth century.

The Act of 1828 still left the old Common Councils with many possibilities of evil. A few years later it was considered necessary to have a thorough inquiry into the whole municipal system of Ireland. Accordingly William IV., in the year 1834, appointed a Commission consisting of thirteen prominent lawyers to conduct an inquiry into the Irish municipal system. The English system of municipal government which was likewise in need of a thorough overhauling was at the same time made the subject of inquiry. The Irish commissioners presented a general report upon the state of municipal government in Ireland in the year 1835, and in that and the following year a series of local reports upon upwards of one hundred Irish towns. These reports are an invaluable contribution to Irish

municipal history. From them a good deal of material for this history of municipal government in Ireland has been obtained, and upon them the present section is based.

Amongst other subjects dealt with in that inquiry were the jurisdiction and powers of the corporations in the administration of justice and the nature and management of their income, revenues, and funds, whether charitable or otherwise. The results of their inquiry into these two departments of municipal government afford valuable material for the student of municipal history.

The Administration of Justice.

In the early part of our work we dealt with the administration of justice in the towns of mediæval Ireland, and showed how the administration of justice in the Hundred Courts by civic magistrates popularly elected and assisted by juries of their fellow townsmen was regarded as one of the most cherished privileges of the burgesses of that period. We have now to see

how the progress of time affected that important department of municipal government.

We find that civic courts presided over by civic magistrates continued to exist down to modern times, and that the practice of trial by jury still prevailed. Some of the old chartered privileges, such as exemption from the jurisdiction of external tribunals, were, however, no longer observed.

Such of the corporate districts as had been created counties of themselves, namely, those of Dublin, Cork, Limerick, Waterford, Galway, Drogheda, Kilkenny and Carrickfergus, possessed a criminal jurisdiction exclusive of that of the general magistracy of the adjoining counties. In these cities and towns the ordinary duties of the justices of the peace were exercised by such officers of the corporations as were, by charter, invested with the authority of magistrates, or by additional magistrates appointed by special Acts of Parliament.

The early charters of some of the more important cities and towns constituted the

mayor, and some of the other magistrates, Justices of Oyer and Terminer and general gaol delivery. In Cork, Carrickfergus, and Dublin, where these powers had been granted, the ordinary criminal business was transacted at quarter sessions, the more serious offences and the general delivery of the gaols being reserved for the judges of the superior courts under their various commissions. The mayors of the places named were nominally associated with the judges in their commissions.

The chief officer of every corporation was, generally, invested with the powers and authority of a justice of the peace, and he, or his deputy, was in practice the Chief Magistrate, while in office, within the corporate limits. In some places he was *ex officio* a justice of the peace for the adjoining county. In Athlone, Londonderry, Dingle, Kinsale, New Ross, and Youghal, as in the counties of cities and towns above mentioned, the corporate magistrates enjoyed a jurisdiction exclusive of that of the general magistracy of the county at large.

In some cases inconvenience in the administration of justice was caused by the extension of the corporate towns beyond the original borough limits, owing to increase of population and building enterprise. A remarkable example was the city of Dublin, a very large proportion of which was not within the corporate jurisdiction, or contributory to the local grand jury assessments.

The corporate charter magistrates were usually those only who held the temporary office of mayor, provost or sovereign ; but in some cases the charters also conferred magisterial authority upon other officers, or upon the individuals belonging to a particular class of the corporation, as the aldermen, or upon some of the senior members of it, or upon those who had filled particular offices such as that of Sheriff ; and where so conferred it was generally for life. The corporate magistrates enjoyed a peculiar status. They were not amenable to the direct superintendence and control of the Crown, as was the case with the county magistracy. And,

constituted as the great majority of corporations were at the period of the inquiry, the general body of the inhabitants had no voice in the selection of the civic magistrates. It thus happened, that with few exceptions, in the corporate cities and towns the private "Patron" or the self-elected council had the nomination of the magistracy, independent alike of the authority of the Crown and the opinion of the public. A glaring defect in the case of the corporate magistracy was that, however incompetent or infirm the wielder of magisterial authority might be or become, there was no power of correcting the evil by removal, and the substitution of qualified or efficient persons.

The civil jurisdiction of the borough courts in the greater number of towns was limited to debts of a small amount. The most common limit, and the one usually prescribed by the charters of James I. was five marks, equal to £3 1s. 6d. in modern currency. In some cases, as in Dublin, Limerick and Cork, the jurisdiction was unlimited as regards the amount of the debt that might be sued for. The judges

were the annual chief officers of the corporation, such as the mayor, provost, or portreeve, with the addition sometimes of the sheriffs. The recorder, where such an officer existed, instead of being a judge of the court, was in several places, of which Dublin was one, permitted to assist only as assessor, or adviser of the presiding judges, who were persons usually without legal knowledge, or previous practical experience. The practice of trial by jury prevailed in the civic courts.

The most usual mode of commencing a suit in these courts was by the process of attachment against the goods of the defendant, to compel his appearance. Arrest of the person, except in execution of a judgment of the Court, had by this time become rare in the local courts, the statutes prohibiting such arrests, except for debts of £20 and upwards, having fixed an amount generally exceeding the pecuniary limit of the jurisdictions. In Kilkenny, however, a writ to arrest the person appeared to be considered the only process by which a suit could be commenced.

The procedure in these courts was both expensive and dilatory. The costs were quite disproportionate to the usual amount of the debts sued for in them. The comparative cheapness of proceedings by civil bill before the assistant barristers (now represented by the county court judges), and in suits for wages before the magistrates at Petty Sessions, had tended to diminish to a considerable extent, the practice of the corporate tribunals. The Commissioners considered, however, that these municipal courts might be made highly conducive to the cheap and convenient administration of justice, by the introduction of more simple forms of procedure and pleading, the attendance of a competent professional judge, the establishment of regular sittings at reasonable intervals, a reduction of costs to a scale more suitable to the amount of the demands usually contested in them, and the substitution of an appeal under proper regulations.

In some corporations there existed a Court of Conscience wherein a summary

jurisdiction for the recovery of small debts was exercised. This jurisdiction appeared generally to be traceable to long usage or prescription. It was recognised or established by Act of Parliament in Dublin, Cork, Kinsale, Drogheda, Londonderry, Waterford and Wexford. A similar jurisdiction was exercised in several other corporate towns, but without legislative sanction or chartered authority. In no case did the amount of the jurisdiction extend beyond forty shillings. The usual, if not the only, mode of enforcing the decrees of these courts was by imprisonment, the consequence of which was, that very frequently persons of the poorest classes endured that punishment for long periods for non-payment of trivial sums.

The Judge in these courts was usually the mayor or other chief magistrate. In Dublin and Waterford, by special Acts of Parliament, the ex-mayor was the judge for the year succeeding his year of office. In Dublin, we are told, the vicious practice of farming the office of judge of the Court of Conscience by the ex-lord mayor to some

other alderman was not unfrequent; and to this practice was attributed much of the abuse which prevailed in that Court. Every case decided there might be reheard on certain terms. These rehearings, to which the rules of the Court did not seem to impose any limit, greatly enhanced the profits of the judges and officers.

Another interesting court of which mention must be made, was the Court of Pie Poudre. The grant of the right to hold this Court is mentioned in the charters of several corporate towns. The jurisdiction of the court seems to have embraced the ordinary transactions at fairs and markets. A Court of Pie Poudre existed in Drogheda as late as 1835. The Mayor was the Judge of the court. In it he exercised the power of enforcing all contracts entered into between parties at the fairs, by detention of the subject of contract, and by such other means as he thought likely to enforce his authority. In this court the legal course of proceeding was quite disregarded. The mayor of Drogheda considered it discretionary whether he would

have a jury or not. The later practice was to dispense with a jury.

Scarcely less important than the mayors as officers of justice were the sheriffs appointed by the corporations of counties of cities and towns. Their functions in reference to the administration of justice, both criminal and civil were, generally speaking, those of the sheriffs of counties at large. Their most important function, in reference to the public, was the return of jurors to Assizes and Quarter Sessions. The exercise of this power, especially in the return of grand jurors, by whom the public taxation of the county of the city or town was imposed, was a subject of much jealousy and well founded complaint.

A large proportion, frequently the majority of the grand jurors, was empanelled from the members of the governing corporate bodies—an arrangement which, as those bodies were then constituted, practically vested and preserved in limited corporate councils the extensive powers of local taxation given by law to the grand juries. The composition of the grand juries

was thus directly and effectively that of the corporations, and partook of their defects and unpopularity. The corporation and the Grand Jury of the City of Dublin afforded a striking instance of this connexion between the two bodies.

In the return of petty juries on occasions of interest to the corporations or affecting their influential members or supporters, the sheriffs had many opportunities of giving an unfair advantage to those bodies or individuals. That those opportunities were availed of seems evident from the fact that the Legislature had found it necessary to enact statutes to check such abuses.

With regard to the appointment of sheriffs by the municipal corporations as then constituted the Municipal Commissioners in their Report remark: "The great importance of the duties entrusted to sheriffs, in relation to the administration of justice, and the extent of interests involved in their due exercise, especially in the metropolis, almost demonstrate that such corporate bodies as we have described, limited in numbers, sectarian, exclusive,

and often intolerant in opinion, ought not to have the appointment of officers entrusted with these duties. Confidence and faith in the impartiality of the officers and ministers of the laws are necessary, as well to insure due respect for the tribunals by which they are administered, as to protect the laws themselves from suspicion and contempt. That such confidence is not generally placed in the conduct of Corporate sheriffs in Ireland, in reference to the selection of juries on political occasions, is matter of notoriety."

Besides the municipal courts mentioned there existed within the limits of several of the corporate towns of Ireland, manor courts, presided over by seneschals appointed by the lords of the manors. These courts commonly derived their origin from the patents of the respective manors. They sometimes possessed powers of adjudication to an unlimited amount. The usual pecuniary limit of the jurisdiction was £10; in several it extended to £200. The administration of justice in these courts gave rise to much dissatisfaction. The

judges of the Manor courts who were appointed by the lords of the Manor or their agents, were frequently men little qualified and otherwise unsuitable for the presidency of such courts. The courts were often held at inns and public houses, without regard to regularity or decorum, and with little observance of legal principle. Manor courts have been held in Dublin within living memory. Their existence is still commemorated by such names as "Manor Street," "Thomas Court."

The Management of Corporate Property.

The permanent revenue of municipal corporations in Ireland at this period was derived from either or both of two sources—landed estates and tolls and customs. The incomes of very many were inconsiderable in amount, and insufficient for the due remuneration of the corporate officers, while the revenues of others were of large annual amount.

In this section of their Inquiry the Municipal Commissioners experienced considerable difficulty. In some instances, the ancient charters contained grants of the corporate district, or of apparently extensive portions of it, which it was then difficult, and often impossible to define. In some cases they failed to trace the original grant or title of the corporate property. The state of the books and records of the corporations, their imperfect condition or total loss, the suppression of them, and the withholding of information in some instances, tended to involve these matters in considerable obscurity. The Commissioners, however, considered it apparent from the grants, and the other evidences which they had found of their ancient possessions, as compared with the then existing extent of the estates of several of the corporate bodies, that large portions of landed property, formerly given to them, had long since passed into other hands.

The management of the corporate estates, as developed in the transactions of more recent periods, displayed, they stated, in

many instances a marked disregard of the public interest on the part of the bodies under whose control they had fallen, and afforded evidence from which the character of the earlier appropriations might be inferred.

The members of the common councils, or governing bodies, frequently appeared in the rentals of corporate property as the favoured grantees or lessees of long and valuable leases, amounting in many instances to perpetuities, at inadequate rents, which appeared to have been made without survey or advertisement, the same parties being thus, substantially, the lessor and lessee, and exercising without scruple, or regard to public duty or trust, in their own favour, a complete dominion over the corporate property.

In other cases, the influential station of the "Patron" had been used to secure the appropriation, to his own use, of the corporate property.

The management of the corporate revenues was, almost everywhere, in the hands of the governing bodies; and except

in a few corporations, where, by the constitution, the courts or assemblies of the freemen were consulted for the approval of corporate acts, the management and disposition were altogether secret. By this secrecy of the proceedings the wholesome check of public opinion, and the protection of public vigilance over the disposition of the corporate funds were lost.

In some boroughs, all corporate property had disappeared, and there were no funds applicable to the maintenance of the magistracy or police of the town. In other places, as Dublin, Londonderry and Waterford, very considerable debts had been incurred, and were charges upon the corporate property.

The corporations insisted at the Inquiry that they were entitled to the estates in absolute dominion, to dispose of at their will and pleasure, and not upon any trust whatever. This attitude of mind goes a long way towards explaining the partial or complete disappearance of corporate property in Ireland which had taken place before the year 1840.

The payment of the municipal officers formed the chief head of expenditure in the greater number of the corporations possessed of property. In some, a portion of the revenues was also directed to other purposes of local utility; but the funds applicable to such purposes were generally very inadequate, compared with what would have been at the disposal of the municipal body under more correct management of the estates.

Portions of the corporate revenues were, in some corporations, devoted to the support of schools and charitable foundations. In a few instances, funds had been vested in the corporate body for charitable purposes. A flagrant example of the abuse of such trusts occurred in Belfast in the early part of the nineteenth century. Several benevolent individuals had, from time to time, entrusted to the sovereign and free burgesses of that borough sums of money, which formed by accumulation a considerable amount, to be applied to charitable purposes in the district. The funds were, for many years, carefully

managed and secured, and the income faithfully disbursed. But since the beginning of the nineteenth century, the trusts had been wholly neglected, the charitable funds which were outstanding on securities were called in, and came to the hands of individual members of the corporation, who appropriated them to their own use.

Tolls and Customs.

The income from tolls and customs, levied by municipal corporations, formed a very important branch of the corporate revenue. In several cases the receipts from this source were the only funds at the disposal of corporate bodies. The tolls and customs levied were divisible into two classes: tolls claimed originally as toll thorough, in consideration of services performed by the corporate bodies, in the repair and preservation of the streets, bridges, and walls of the corporate towns; and tolls deriving their origin from grants of fairs and markets. Instances have been given in the earlier part of this work of

grants of liberty to corporate towns to take certain tolls for limited periods, towards the building and repair of the town walls and other purposes. To a few corporations grants of such tolls were made in perpetuity, as in Galway where considerable tolls were collected under such title. In practice, however, and wrongly so, these tolls were claimed as belonging by prescription to the corporate bodies.

The considerations for which these grants were made had been, according to the Commissioners, almost everywhere neglected, some long unperformed, some imperfectly attended to. The occasional repairs of portions of the public streets, and, in some towns, of one or more bridges, were the only services of this character then performed by any of the municipal corporations. In the great majority of corporate towns a large share of the expense of such works was defrayed by Grand Jury presentments on the county at large, or on the corporate district, if a county of itself.

The ancient grants generally limited the tolls to charges on goods coming to the cor-

porate towns to be sold. By an Act of the Irish Parliament, the 25 Henry VI. c. 3, which recited " That many people took and levied customs of merchants passing and going with their merchandize through the King's highways, against right and reason," it was enacted, " that no man should be so hardy thenceforward to take or levy, or cause to be taken or levied, any such custom of merchants, or other people in the King's highway or elsewhere, but within cities, boroughs, or other merchant towns where the said merchandize be bought, or sold, or brought to be sold there, as they have power and sufficient authority to take and levy such customs." A later statute of Queen Anne's reign restricted the levying of this class of toll to cases where cattle or goods were driven over a bridge or bridges actually repaired at the expense of the person or body politic levying the toll; and as to cattle or goods sold, consumed, or slaughtered in a city or borough the levying of toll was subject to the general rules of law applicable in the case, which required that the consideration

for its payment should be performed in respect of the place for the passing over which it was demanded. Yet, notwithstanding these Acts, toll thorough had been very generally demanded, and had been the subject of violent opposition and litigation.

The fair and market tolls levied by the corporate authorities were derived under grants which rarely defined specifically the charges to be made. They were consequently limited only by the general principles which would control even the express provisions of the charters, namely, that they should be reasonable in amount.

In practice, legal principles and statutory enactments were alike contravened. Tolls excessive, and unreasonable in amount were frequently exacted. The mode of collection had been such as, combined with the doubts of the strict legality of the demand, to provoke a violent course of resistance. Often unjustly and illegally claimed and enforced, their collection had been resisted and encountered by violence and tumult. The Commissioners recommended that the whole system should be thoroughly revised.

CHAPTER XII.

A Chapter of Illustrations.

A few examples taken from the later history of Irish municipal corporations, old and new, will bring home to the reader the main defects of the Irish municipal system dealt with in the preceding chapters. They are taken from the special reports upon individual towns made by the Municipal Commissioners of 1835.

Enniskillen.

Enniskillen was one of those towns whose incorporation formed part of the plan of the New Plantation in Ulster. Previously to the charter of incorporation a grant of lands, including one-third part of the island of Enniskillen, was made by letters patent to one William Cole. By these letters patent, the grantee was bound, within four years, to erect a town at Enniskillen, and to allot houses in the town, with portions

of the lands so granted to him, to twenty of the new settlers, a space for a common for the inhabitants of the town, and sites for a church, a cemetery, a gaol, and a school-house.

The grant of these letters patent was followed by the charter incorporating the borough. By this charter "All the inhabitants within the town and townland of Enniskillen and the whole island of Enniskillen" were incorporated under the name of "The Provost, Free Burgesses, and Commonalty of the Borough of Enniskillen." The corporation was made to consist of one Provost, fourteen free burgesses, and an indefinite commonalty. The latter were defined by the charter to be "all the inhabitants of the town, and so many and such men as the provost and free burgesses for the time being shall have admitted to the freedom of the borough." The Provost was made elective annually, out of the free burgesses, by the provost and free burgesses. It was provided by the charter that he should take the oath of office and the oath of supremacy.

In this corporation, as in others of a similar structure, the practice was to confer the office of provost on a small number of persons who held it in rotation. For several years it was held alternately by two individuals. Residence was not required as a qualification for the office. The provost enjoyed a salary of £100 a year and the produce of certain fees. A deputy was at one time employed to perform the duties of the office at a salary of £16 a year.

The free burgesses held their offices for life; but were removable for misconduct by the provost and free burgesses, or the majority of them. In case of a vacancy, the charter provided that a free burgess should be elected by the provost and free burgesses, or the major part of them. No qualification of residence or otherwise was required except that of being a freeman of the corporation.

In the Report upon this Corporation we read the following remarks regarding the election of the governing body, that is, of the provost and free burgesses: "The manner in which the elections of members

and officers take place affords a strong illustration of the character of this body, and shows how much their proceedings are regarded as mere matters of ceremony. We find that a burgess has been elected at a meeting of the corporation consisting of the provost and one burgess only. And we find the further fact of a nomination (we cannot call it election) of a provost, at which none but the provost attended to nominate the provost of the succeeding year."

The corporation was under the patronage of the Earl of Enniskillen, whose influence in it was paramount. All the members were nominated by him, or at his instance.

The governing body at the time of the Inquiry consisted of 15 individuals. The Commissioners give a list of their names, showing their connexion with Lord Enniskillen, which it may be well to reproduce. The list is as follows :—

1. The Earl of Enniskillen.
2. Lord Cole, the patron's son.
3. Arthur Henry Cole, the patron's brother.

4. Richard Magennis, the patron's nephew.
5. William Gabbett, connected by marriage with the patron.
6. Hamilton Irvin, a friend of the patron, major in the militia regiment of which the patron is Colonel.
7. William Corry, adjutant of the patron's regiment.
8. Baptist Gamble Smith, M.D., assistant surgeon of the patron's regiment.
9. Charles Ovenden, M.D., the patron's family physician.
10. Adam Nixon, a friend of the patron, and Clerk of the Peace for the county, of which the patron is *custos rotulorum*.
11. Joseph Maguire, land agent of the patron.
12. Rev. James Fox, friend of the patron.
13. Rev. James Rogers, the like.
14. Rev. Abraham Hamilton, the like.
15. Richard Deane, the like.

Of these fifteen members only four were resident in the town.

This borough returned two members to the Irish House of Commons. It is easy to understand that, constituted as it was, the nominees of the Cole family were assured of a safe return. One member was retained at the Union; and no compensation was consequently received.

Outside of the select body consisting of the provost and free burgesses, little power was ever exercised by the general body of inhabitants of Enniskillen. Notwithstanding that the charter of incorporation made the commonalty who were defined to be "all the inhabitants of the town, and so many and such men as the provost and free burgesses for the time being shall have admitted to the freedom of the borough" a constituent part of the corporate body, the general body of inhabitants were excluded from a share in the administration of municipal affairs. The corporate records showed that from an early period the provost and free burgesses had exercised a discretionary and absolute power of admitting to freedom or refusing it. No right of freedom, founded on inhabitancy or on

birth, servitude, marriage, or any other title was recognised. Out of a population of over 6,000 inhabitants, there were in the year 1835, only fifteen freemen, besides the Provost and free burgesses. All of these freemen had been admitted by grace especial.

The charter of this corporation created a Court of Record, with civil jurisdiction to the amount of five marks (£3 6s. 8d. Irish) within the borough, to be held before the Provost weekly. This court in the later stage of its career was of little practical utility to the town. Very little business was done in it. One of the chief grounds of objection to it arose from the constitution of its juries. They were exclusively Protestant, and were composed, for the most part, of persons of low condition. The juries were selected by the Recorder, who was at once Town Clerk and registrar of the Borough Court. Eighteen persons were usually summoned to attend. Those who answered the summons were usually pensioners, and persons having little or no business of their own to attend to, and to whom it was worth while to devote a few hours for the sake

of the fees which were allowed them. Grave dissatisfaction and distrust of the tribunal existed among the Roman Catholics who were stated to comprise more than half of the population of Enniskillen. The conduct and ignorance of the juries were likewise subjects of complaint.

If the existence of the borough court was of little utility to the inhabitants of Enniskillen that of the corporation, as it was then composed, was positively harmful. A remarkable instance of the culpable ignorance of the governing body in their management of the corporate property was brought to light at the inquiry into the state of this corporation. It was proved to the satisfaction of the commissioners that the corporation of Enniskillen had enjoyed for upwards of two centuries a grant in perpetuity from Sir William Cole, the original patentee of the corporate district, of the tolls of the fair and markets of Enniskillen at an annual rent of £7 10s.0d. Yet in the year 1826 the corporation applied for and accepted from Lord Enniskillen, a descendant of Sir William Cole, a lease of

the same tolls for a period of ten years at the annual rent of £10! Comment upon such action is superfluous.

In justice to the memory of the then Earl of Enniskillen, however, it must be stated that his lordship seems to have acted in good faith in the matter.

The tolls of Enniskillen were at one time farmed out by the year, but owing to resistance to their collection being made, the corporation had to resume their collection. The course adopted in levying the custom on cattle at the fairs was stated to be as follows:— Twenty-one men, in all, were employed by the corporation, under the superintendence of the collector, to stand at the "gaps," that is, at the places of entrance and exit of the fairs. At each gap there was a bench, on which a book was placed, and when the cattle approached to be driven out, the person in charge of them, if he did not pay custom, was required, in order to attest the truth of his declaration that the cattle had not been sold, to touch the book. This was considered equivalent to an oath. The prac-

tice was called " clearing or paying," each person being obliged either to " clear," by touching the book, or to " pay " the custom. This mode of collection was illegal, the corporation having no power to impose an oath for such a purpose. Violent resistance to the collection of the tolls was made by the frequenters of the fairs.

As the corporation of Enniskillen were so completely under the control of the patron, the Earl of Enniskillen, and were so utterly devoid of responsibility to the inhabitants of the town the Commissioners suggested that, as the Earl was manifestly desirous that the funds of the corporation should be applied for public purposes, it would be better that he should manage the funds directly by himself or his agent, applying them under his own scrutiny to purposes of public utility, than that he should interpose between himself and the execution of his own intentions " a body, unfit from their constitution to devise and execute useful plans with prudence and economy, and not stimulated, either by interest or a sense of responsibility, to

watchfulness or vigour." To what a sorry pass must the municipal government of this plantation town have come, when such a suggestion by His Majesty's Commissioners was possible !

In the concluding portion of their Report the Commissioners stated : " In those other matters of municipal regulation which, in most populous places, form the chief objects of care to efficient local authorities, the corporation of Enniskillen does absolutely nothing. It supplies no magistracy, it provides no police, it maintains no gaol, it furnishes no nightly watch, it forms no provision and makes no contribution for the paving, the lighting, or the cleansing of the town. In short, it performs adequately no function, and it is calculated to perform few (and these not the functions of most importance) by which a municipal body, useful and efficient, can administer to the order, the comforts, and the well-being of the community placed under its management."

Strabane.

Strabane was another of the places whose

incorporation formed part of the plan of the New Plantation in Ulster. An allotment of " proportions " of escheated lands in the " Precinct of Strabane " was made to a number of Scottish undertakers, chief amongst whom were the Earl of Abercorn and other members of the Hamilton family. In a document recorded in the Calendar of the Carew MSS., under date July, 1611, the following reference to works done in this precinct is made : " The Earl of Abercorne, chief undertaker in the precinct in the county of Tyrone, has taken possession, resident with lady and family, and built for the present near the town of Strabane some large timber houses, with a court 116 foot in length and 87 foot in breadth, the groundsills of oaken timber and the rest of ' Allor ' and birch, which is well thatched with heath and finished. Has built a great brew house without his court 46 foot long and 25 foot wide. His followers and tenants have, since May last, built 28 houses of fair coples ; and before May by his tenants who are all Scottishmen, the number of 32 houses of like

goodness. Is preparing materials for building a fair castle and a bawn which he means to put in hand for the next spring. There are 120 cows in stock for his own use. Sir Thomas Boyde, Knt., has a proportion of land, is resident with his wife and family, is providing materials for building. Sir George Hamilton, Knt., a proportion of land, resident with wife and family. Has built a good house of timber for the present 62 foot long and 30 foot wide. He brought over some families of Scots who have built them a bawn and good timber houses, 80 cows and 16 garrons among them. Sir John Dumonde, Knt., 1,000 acres; appeared in person; took possession and has one Scottishman, 2 garrons, and a mare. James Clapham, 1,000 acres, resident, prepares to people his land, competent store of arms in readiness. James Hayge, 1,500 acres; has not appeared nor any for him; nothing done. Sir Claude Hamylton, Knt., a proportion 2,000 acres, has not appeared nor any for him, and nothing done. George Hamilton, 1,000 acres; has taken poss

sion, is resident, making provisions for building."

To the infant colony at Strabane King James granted in the year 1613 a charter of incorporation whereby "all the inhabitants" of the corporate district were incorporated under the title of "The Provost, Free Burgesses, and Commonalty of the Borough of Strabane."

A few years later, we are enabled to trace the gradual growth of the town and the peopling of the surrounding district. In the years 1618-1619 a survey of the plantation of Ulster was made by Nicholas Pynnar. The results are embodied in "A Book of the Plantation of Ulster," an important historical document included in the collection of MSS. referred to. The following notes with reference to the Precinct of Strabane occur therein: "Earl of Abercorne 1,000 acres called Strobawne. A fair castle and very strong, but no bawn, a school house of lime and stone, also a church in building, walls about 5 foot high, but has been at a stand ever since the late Earl died. Also about the castle is a

town of 80 houses, many of lime and stone, strongly built, and many other good timber houses. In these 120 families, make 200 men, each having arms. 3 watermills for corn. Planted with British : 1 of 120 acres, 5 of 60 apiece, 1 of 120 acres, 2 of 60 apiece, 3 of 40 apiece. Townmen, 53. Each has a house and garden plot, with some land, mostly merchants and tradesmen with some cottagers. In toto 65 families of 180 men."

The town of Strabane gradually grew in size and its population in numbers. In 1833 the inhabitants numbered 4,700 and the houses 836. Dominated as the town was by the castle of the Earl of Abercorn, and planted with his adherents, it is not to be wondered at that the government and Parliamentary representation of Strabane fell under the complete dominion of the Earl and his descendants.

By the charter of King James the corporation was made to consist of one provost, twelve free burgesses, and a commonalty indefinite in number. The provost was made elective annually on the 24th of

June, out of the free burgesses, by the provost and free burgesses, or the major part of them. If there were not an election on the charter-day the provost continued to hold his office until there was a new election.

The manner of electing the Provost of Strabane afforded a striking illustration of the influence exercised in an Irish Municipal Corporation by its "Patron." We shall describe the mode of election in the words of the Commissioners who inquired into the state of the borough of Strabane. "The practice," they said, "has been, for a long series of years, generally (but not always) to appoint to the office of provost the agent of the Marquis of Abercorn, the patron of the borough. The gentleman who was provost at the time of the holding of our Inquiry had filled the office for 23 years, during the whole of which time he was the agent of the patron. It being understood that, with the concurrence of the Abercorn family, he should be provost, it was deemed unnecessary to convene meetings of the burgesses for the purposes

of election. The course adopted was, that the recorder and provost attended at the town hall, between the hours of 12 and 2 o'clock on the day when a meeting ought regularly to take place ; an entry was then made in the books that a sufficient number of free burgesses did not attend to elect a provost, and the provost, as a matter of course, continued to hold his office for the succeeding year. During the 23 years during which the provost whom we found in office has presided over the corporation he was only twice elected—first in 1810, and afterwards in 1824."

In 1833 a new agent was appointed over the Abercorn property. Like his predecessor he was in due course " elected " Provost of Strabane.

In this corporation the practice prevailed of requiring the Provost to take, in addition to his oath of office, the oaths of supremacy and abjuration. He also signed the declaration against transubstantiation. The charter required the provost, in addition to the oath of office, to take the oath of supremacy only.

The Provost enjoyed asalary of £70 a year.

The Free Burgesses, twelve in number, were directed by the charter to be elected out of the "better and more honest inhabitants of the borough" by the provost and free burgesses, or the major part of them. In effect, the free burgesses were nominated by the Marquis of Abercorn or his agent.

The commonalty, according to the charter was to consist of "all the inhabitants, and such other men whom the provost and free burgesses of the borough for the time being should admit to the freedom of the borough." In practice, all freemen were admitted by the provost and free burgesses.

A Common Council consisting of provost, free burgesses, and freemen at one time exercised important functions in this corporation, notably in the making of bye-laws. At a later period, it had ceased to exist as a body exercising corporate functions.

The freemen never possessed political power. In the year 1833 they were few in

number, and enjoyed no municipal power, nor any privilege, save that of having their goods weighed, without charge at the public crane.

The Corporation was of an exclusive character, no Roman Catholic being a member of any of its classes. Shortly before the date of the Inquiry, it was proposed to two Roman Catholics that they should become freemen, but they declined the honour.

The borough of Strabane was represented in the Irish House of Commons by two members, elected according to the charter by the provost and free burgesses. In practice, the nominees of the "Patron" were elected. When the borough was disfranchised as a result of the Union, the sum of £15,000 "compensation" was paid to the "Patron" for the loss of political power and influence thus occasioned.

Waterford.

The corporation of Waterford is one of the most ancient in Ireland, its earliest charter

bearing date 1205, the seventh year of the reign of King John. As already mentioned, the liberties and franchises of the citizens were seized into the hands of King James I.—the penalty for the steadfast adherence of the citizens to their old faith—and were restored to the citizens by Charles I. "with such alterations and omissions as had been advised of to that end" on their payment of the sum of twenty thousand marks. The charter of restoration, bearing date 26th May, 1626, remained until the year 1840 the governing charter of this corporation.

Under this charter a Common Council consisting of the mayor, sheriffs, aldermen, and assistants was constituted for the government of the city, with power to make bye laws and levy taxes for the maintenance of the civic government. The mayor was to be elected from among the aldermen; the sheriffs and aldermen from among the assistants; and the assistants from among the freemen.

The freedom of this corporation was obtained by the rights of birth, marriage,

and servitude, and by grace especial. All the inhabitants possessed of any one of the rights mentioned were not, however, admitted to the freedom of the corporation. In the later stages of its history, admission to freedom had become greatly restricted. The freemen possessed the valuable right of voting for members of Parliament to represent the city. They were not admitted to the exercise of any other corporate power.

The freemen of this corporation, however, remained in enjoyment down to modern times of an ancient privilege, that of freedom from tolls and customs throughout the King's lands and dominions. From Waterford tolls, as long as they were collected, the freemen were of course free. As late as the thirties of the last century Waterford freemen enjoyed freedom from certain dues at Liverpool and Bridgwater, a valuable privilege in certain trades. But because the acquisition of freedom in this corporation was an object of desire and worth, the Common Council of the city restricted the granting of it to a favoured few.

Of a share in the civic government the freemen had none. The Common Council—a body of forty members—was a close corporation. The Common Councilmen filled the vacancies in their own body. So complete was the exclusion of the freemen that they were not considered as forming a part of the corporate body.

The Common Council itself fell for a time completely under the dominion of a few individuals known as the "leaders" of the corporation. These men assumed the entire government of the corporation and arrogated to themselves the power of filling up the various corporate offices according to their will and pleasure. In order to avoid friction or disagreement between themselves with regard to these important matters the "leaders" entered into a written compact in the year 1818. A copy of this document was produced in evidence at the Municipal Corporations Inquiry.

The parties to this remarkable document were the Right Honourable Sir John Newport, Bart., and William Newport, Esquire, of the one part, and Harry Alcock and

James Wallace, Esquires, of the other part. Under this agreement Messieurs Alcock and Wallace pledged themselves to support Sir John Newport for the representation of the city of Waterford, during the latter's lifetime, or for such time as he should consider himself capable of efficiently discharging the duties of that office. At the expiration of either event Mr. Alcock was to be supported by every exertion of the Newport family and their friends, in the future representation of the city, during the life of the said Mr. Alcock. Should it happen, however, that Mr. Alcock should die before he should be "entitled to represent said city," or to become a candidate according to the tenor of the agreement, then the said James Wallace should nominate the candidate who should be supported for the representation of the city for life, on the joint interest of both parties. After the death of the said Harry Alcock, or such other representative, the Newport family were to nominate the next candidate for a period of five years, then the other contracting party and their

successors to nominate for the next five years, and so on alternately for ever.

Having thus arranged to their own satisfaction for the representation in Parliament of Waterford City, the contracting parties agreed that they should elect alternately to the office of mayor, that vacancies amongst the aldermen should be so filled as to ensure an equal representation of both parties, and that the Alcock party should "fill up their own vacancies of councilmen," and the Newport family "their own and Bolton's." The various corporate offices were then classified and an equal distribution of patronage mutually agreed upon. It was further agreed that the mastership of the Leper Hospital and that of the Holy Ghost Hospital should be filled alternately by the nominees of the respective parties. Not even the Church escaped from the far spreading net of the Newport-Alcock combine. The compact provided that the church livings should be disposed of in a separate class, and that the first appointment which should occur should be disposed of by lot.

Such was the influence of the Newport party and of the Alcock-Wallace party in Waterford that they were able to impose this extraordinary arrangement upon the supine Common Council. For several years the Council sanctioned whatever was directed by the heads of these two parties.

At last, in the year 1830 the Common Council shook off the yoke. By a series of resolutions passed at a meeting of the mayor and Council it was decided to resume into their own hands the management and control of civic affairs. The domination of the "leaders" was accordingly terminated.

Limerick.

The later history of the city of Limerick affords another striking illustration of the evils attendant upon the corrupt system of municipal government which prevailed in Ireland since the Stuart period.

In the year 1671, pursuant to the provisions of the Act of Explanation, "New Rules" were made for the government of

the corporation of Limerick. By the first of these, the approbation of the Lord Lieutenant and Council was made necessary to the appointment to the corporate offices of mayor, sheriffs, recorder and town clerk, within ten days after their election. By the second, the oath of supremacy was required from all such corporate officers. By the third, the election of all corporate officers was taken away from the body of freemen, and vested in the Common Council, and nothing permitted to be discussed in the general assembly of freemen, or Court of D'Oyer Hundred, which had not previously passed the Common Council. And, by the fourth, the admission of foreigners and Protestant settlers in the city of Limerick to the freedom of the corporation was provided for as in other corporate towns in Ireland. The corporation of Limerick was thus definitely given that sectarian character which prevailed until the reform of municipal government in Ireland in the year 1840.

The government of this important city during the eighteenth century seems to

have fallen exclusively into the hands of the Common Council, a self-elected body consisting of the mayor, sheriffs, aldermen, and burgesses. The condition and conduct of this body were made the subject of investigation before a committee of the Irish House of Commons in the year 1761. In the Report to the House the following references to the general proceedings of this body occur:

"That it appears to the committee from the books and accounts of the said corporation, that the mayor and common council of the city have, for several years past, taken upon themselves to dispose of the whole revenues of the said corporation, and the greatest part thereof amongst a few members of the said council, without the approbation of the Court of D'Oyer Hundred.

"That the mayor and common council of the city had taken upon them to demise the greatest part of the estates of the said corporation to some members of the common council for 999 years, and to other members of the said councils for ever, for trifling rents.

"That it appeared to the committee, from the books and accounts of the corporation, that the mayor and common council of the said city had, for several years past, misapplied and wasted the greater part of the revenues of the city.

"That it appeared to the committee that the mayor and council had taken upon them to make a lease for ever, at a trifling rent, to Alderman Arthur Roche, of the greatest part of the hospital lands, which were before constantly enjoyed by the corporation for the use of the poor.

"That it appeared to the committee that the said Arthur Roche had acquired so great an influence and power in the common council, that no person could be admitted a freeman, or common councilman, or magistrate, but through his interest; and that he prevented some gentlemen, who had served the office of sheriff in the city, and against whom he admitted there was no objection, from being admitted common councilmen, though having served such office was the usual recommendation to that board.

"That it was the opinion of the committee, that the interposition of Parliament was absolutely necessary for redressing the said several grievances and abuses, and for preventing the like for the future."

Consequent upon this Report, a Bill for the better government of the corporation of Limerick was prepared and transmitted to England by the Lord Lieutenant and Privy Council with the usual recommendation in its favour, but it never reached the status of an Act of Parliament.

From this time onward the influence of the above-named Alderman Arthur Roche declined, and finally gave place to the more powerful interests of the families of Pery and Smyth; which families were represented at a later period by the Earl of Limerick and Lord Viscount Gort respectively. The Smyth family finally gained predominance in the Common Council. John Prendergast Smyth, afterwards Lord Gort, was appointed to the important office of chamberlain of the corporation, holding it for many years until his death in the year 1817. He was succeeded in the

office by the next Lord Gort who held it until the year 1823. The influence successively possessed by these noblemen was such that all admissions to freedom and appointments to corporate offices were generally made on their proposition and nomination, which were acceded to, apparently as a matter of course, by the Common Council without discussion.

In the years 1832 and 1833 the mayor of Limerick was the eldest son of Lord Gort. In 1834 that important office was held by his nephew, and of the two principal permanent offices of emolument in the corporation, those of weighmaster and water-bailiff, the former was held by his brother and the latter by his eldest son. Of the sixty-eight members of the Council in this year ten were members or connexions of his Lordship's family.

The composition of the Council at this period was not calculated to ensure public confidence. Regulating the municipal affairs of a wealthy trading community, nine-tenths of whom were Roman Catholics, the Council did not contain a member

of the Chamber of Commerce, a respectable merchant, nor a Roman Catholic, nor did any such hold office under the corporation.

* * * *

The foregoing examples drawn from the history of individual corporations in Ireland, both old and new, sufficiently illustrate the low state of public morality which prevailed in the management of municipal affairs in Ireland in the eighteenth and early nineteenth centuries. The system of municipal government had become bankrupt of all possibility of conducing to the welfare of the inhabitants of Irish cities and towns. Diverted from its true end of promoting the welfare of the governed, it had been turned to the baser use of forwarding the selfish interests of a narrow political and sectarian class.

We shall conclude this chapter with the closing remarks of the Municipal Commissioners made in their Report to His Majesty King William IV. in the year 1835. "The Corporations" they stated, "have long

become unpopular, and objects of suspicion. As at present constituted, they are, in many instances, of no service to the community; in other, injurious; in all, insufficient and inadequate to the proper purposes and ends of such institutions. The public distrust in them attaches on their officers and nominees; and the result is a failure of that respect for, and confidence in, the ministers of justice and police, which ought to subsist in well-regulated communities, which, where they do exist, conduce so much to the peace and good order of society, and without which the authority of the law may be dreaded, but cannot be respected or effective . . . . We feel it to be our duty humbly to represent to Your Majesty that the early and effectual correction of the existing evils, and the prevention of future mischief, are anxiously desired, and essentially requisite; and that these benefits can be attained, only, by means of a general and complete Reform of the constitutions of the Municipal Corporations in Ireland."

CHAPTER XIII.

The Reform of Irish Municipal Corporations.

The Municipal Corporations (Ireland) Act 1840 marks the beginning of a new epoch in Irish Municipal History. It completely revolutionised the system of municipal government in Ireland. The old corporations were swept away and in their place were set up municipal corporations substantially the same as we know them to-day. As the Parliamentary Reform Act of 1832 had in a large measure transferred the control of matters of State from the classes to the masses, so the Municipal Corporations Acts of Great Britain and Ireland transferred the control of municipal affairs from small self-elected cliques to the general body of inhabitants.

Fifty-eight municipal corporations in Ireland were dissolved by the Act. In ten of the more important cities and towns, namely :—Dublin, Belfast, Cork, Limerick,

Waterford, Londonderry, Sligo, Kilkenny, Drogheda, and Clonmel the municipal corporations were preserved. In these boroughs, however, it was provided that the corporate powers should be exercised by Councils elected on a popular basis as prescribed by the Act. The corporate bodies of the boroughs were to take and bear the name of the Mayor, Aldermen and Burgesses of the respective boroughs, except in Dublin, the corporation of which was to bear the name of " the Right Honourable the Lord Mayor, Aldermen and Burgesses of Dublin," and by those names have perpetual succession. The body corporate of each of these important boroughs was declared capable in law, by the Council elected in pursuance of the Act, of doing and suffering all acts which the body corporate theretofore subsisting in each such borough lawfully might do and suffer, and was declared entitled to, invested with and possessed of all the lawful franchises, rights, trusts, powers, authorities, properties and estates then or of late vested in or belonging, or which of right ought to belong to such

borough or body corporate. The corporate rights and powers hitherto enjoyed accordingly remained unaffected save so far as they were inconsistent with the terms of the Act.

The Act empowered the Queen upon a petition received from the inhabitants of any town in Ireland the population of which at the date of the last Census exceeded 3,000 (a qualification which would include the great majority of the boroughs whose corporations had been dissolved) and signed by a majority of such inhabitants as should be rated to the relief of the destitute poor, to grant a charter of incorporation to such town extending to the inhabitants thereof within the district set forth in such charter, the powers and provisions in the Act contained.

It is a remarkable fact that out of the many Irish towns qualified according to the Act to apply for a charter of incorporation only one town, namely Wexford, has done so.

In many of the boroughs whose corporations were dissolved by the Act, there

were in existence bodies of Commissioners elected under the Act of 9 Geo. IV. already mentioned, namely, "An Act to make provision for the lighting, cleansing, and watching of Cities, Towns Corporate, and Market Towns in Ireland." The institution of these Commissioners had been rendered necessary, as before mentioned, by the almost complete neglect of their most important functions by the old Irish corporate bodies.

Where such bodies of Commissioners existed the Act provided that the real and personal estate of the bodies corporate dissolved should vest in the Commissioners until such charter of incorporation should be at any time thereafter granted. The rents and profits of the old corporate estates were to be applied by the Commissioners in defraying the charges thereon and in aid of the rates levied by them under the Act of 1828, the surplus, if any, to be applied for the public benefit of the inhabitants and improvement of the borough until such charter should be granted.

With regard to the remaining boroughs

whose corporations had been dissolved and wherein no Commissioners under the Act of 1828 were in existence, a classification was made according to the annual value of the corporate property. In towns where the annual value of such property exceeded £100 "Municipal Commissioners" were to be appointed in whom such property was to vest pending the grant of a charter of incorporation or the appointment of Commissioners under the Act of 9 Geo. IV. c. 82. One such "Municipal Commissioner" was to be elected for every 500 inhabitants. In towns where the annual value of the corporate property was less than £100 such property was to vest in the Guardians of the Poor of the Union wherein such town was situate pending a grant of a charter of incorporation or the appointment of Commissioners under the Act of 1828.

It may be of interest to note here that a large number of Irish towns were governed for many years by Commissioners elected under the Act of 1828. Even as late as the passing of the Local Government (Ireland) Act in 1898 two Irish towns, namely,

Monaghan and Wicklow, were so governed.

The most important part of the Municipal Corporations Act was that which related to the constitution of the new governing Councils to be set up in pursuance of the Act in corporate cities and towns and to the constitution of the "Municipal Commissioners" to be appointed in other places pending the grant of a charter of incorporation.

For a period extending considerably over two centuries, a period inaugurated by King James I. the primary principle of municipal government, namely—that the local affairs of the cities and towns should be administered in the interests of the inhabitants by their own freely elected councils and officers, had remained in utter abeyance in Ireland. The period of municipal misgovernment which had been ushered in in the reign of the first Stuart King of Ireland during which every principle of local self-government was cast to the winds was finally terminated by this Act. To the inhabitants of Irish cities and towns there was restored their ancient

right of electing councils for the conduct of their own local affairs.

The Act prescribed that every person qualified as hereafter mentioned should be a burgess of any borough then or subsequently incorporated in respect to which he had the necessary qualifications and a member of the body corporate of the Mayor, Aldermen, and Burgesses of such borough, or in the case of unincorporated towns should be eligible to vote at the election of "Municipal Commissioners." In passing, it may be remarked that the fact that every burgess is a member of the corporate body of his borough is generally overlooked. The municipal corporations of Irish cities and towns are generally, though wrongly, regarded as identical with the Municipal Councils by which such corporations exercise the powers vested in them by charter, statute, or otherwise. If this fact were brought home to our Irish citizens and burgesses there would be less apathy with regard to, and more interest taken in, municipal affairs.

Every man of full age who on the 31st

day of August in any year should be an inhabitant householder and should have been resident as such for six calendar months within the borough or within seven statute miles thereof and who should occupy within the borough any house, warehouse, counting-house or shop which either separately or jointly with any land within such borough occupied by him as tenant or occupied therewith by him as owner should be of the yearly value of not less than £10, to be ascertained and determined in the manner prescribed by the Act, was declared to be a burgess or eligible to vote at the election of "Municipal Commissioners." Provided always that no such occupier should be admitted to be enrolled as a burgess or to vote at any election of "Municipal Commissioners" under the Act, unless he should have been rated in respect of such premises to the relief of the poor, and should have occupied such premises for twelve calendar months at least next preceding such last day of August, and provided such occupier should on or before the 31st day of August in such year have paid or discharged all rates

for the relief of the poor, and all Grand Jury or Municipal Cesses, and all rates and taxes which should have become payable by him in respect of such premises during his occupation thereof except such as should have become payable within three calendar months next before the said 31st day of August.

In every Borough then incorporated, or to which a charter of incorporation should thereafter be granted pursuant to the Act there were to be elected one fit person who should be and be called "The Mayor" of such borough, and in the different wards of every such borough, a certain number of fit persons who should be and be called "The Aldermen" of such borough, and likewise a certain number of fit persons who should be and be called "The Councillors" of such borough. The numbers of the aldermen and councillors were either prescribed by the Act or were to be prescribed in the charters of incorporation which should thereafter be granted. The Mayor, Aldermen and Councillors should be and be called "The Council" of such borough. In the

Council thus elected was vested the control of the local administration. Where "Municipal Commissioners" were constituted in a borough the Act prescribed that one fit person should be elected who should be and be called "The Chairman of the Municipal Commissioners" of such borough.

Eligibility for the offices of Alderman, Councillor or Commissioner depended upon a higher qualification than that prescribed for a burgess or voter. In the more important cities and towns of Ireland, the corporations of which had been preserved by the Act, a candidate for municipal office should be on the burgess roll and possessed of property, real or personal, of the value of £1,000 over and above his debts or should be the occupier of a house rated at £25 per annum to the relief of the poor. In boroughs which should be subsequently incorporated a lower property qualification was prescribed.

Certain disqualifications for office were prescribed by the Act. Clerks in Holy Orders and Dissenting Ministers were declared ineligible. Holders of offices of

profit under Councils or Commissioners, uncertificated bankrupts, and persons having an interest, either directly or through partners, in contracts with Councils or Commissioners, were likewise declared ineligible.

The burgesses or voters in each ward were to vote for the Aldermen and Councillors of their respective wards. One-fourth of those elected, namely, the candidates who received the greater number of votes were to be "the Aldermen," the remaining three-fourths "the Councillors" of their respective wards.

In order to provide for a certain continuity in the conduct of municipal affairs and at the same time to ensure that municipal bodies should represent the opinions of the electorate, it was prescribed that one-third part of the Councillors should go out of office annually, their places to be supplied by election, and that one-half of the Aldermen should go out of office every three years, their places being similarly filled. Outgoing Aldermen and Councillors were declared capable of re-election.

The Act prescribed that the Mayor of each Borough was to be elected by "The Council" out of the Aldermen and Councillors and hold office for one year. Just as in the old Corporations the Mayor or other principal officer was the chief magistrate during his year of office, so in the new Corporations it was prescribed that the Mayor should be a Justice of the Peace for the Borough and have precedence therein.

In the following counties of cities or towns, namely, Dublin, Cork, Limerick, Waterford, Galway, Drogheda, Kilkenny and Carrickfergus the Lord Lieutenant of Ireland was empowered to appoint the Sheriff. By a subsequent Act the nomination of the Sheriff was restored to the Municipal Councils, with the proviso that a list of three names should be submitted to the Lord Lieutenant from which he should select the Sheriff.

With regard to the conduct of business the Act prescribed that questions were to be decided by a majority of the members present, the number present not being less than one-third of the whole.

The Councils were empowered to appoint Committees for purposes which would be better regulated and managed by means of such Committees. Provided, however, that the acts of such Committees should be submitted to their respective Councils for approval. This excellent sub-division of corporate business instituted by the Act of 1840 still prevails.

The income of Municipal Corporations under the Act was derived partly from municipal property transmitted to them from their predecessors, partly from the proceeds of fines and tolls, and partly from rates levied by them under the Act, and strictly limited thereby.

The Council of any Borough established by or pursuant to the Act was empowered to make bye laws for the good rule and government of the Borough, and for the prevention and suppression of all nuisances as were not already punishable under any Act already in force in such Borough.

The Municipal Corporations (Ireland) Act, of which a brief summary of the leading provisions has been given, thus dealt

almost exclusively with the constitution of Irish corporate bodies. It was practically silent as to the rights and privileges of these bodies save so far as it prescribed that corporate rights and privileges hitherto enjoyed should remain unaffected unless where inconsistent with the terms of the Act. A clean sweep was made by the Act of the old irresponsible governing bodies which had so long battened upon the inhabitants of Irish cities and towns, pursuing their own selfish purposes to the utter neglect of the welfare of the people over whom they ruled. The cleansing of the Augean stable had at length taken place.

CHAPTER XIV.

The Towns Improvement (Ireland) Act, 1854.

The next important Act in the history of Irish municipal government was "The Towns Improvement (Ireland) Act" of 1854, 17 and 18 Vic. c. 103. Under this Act many Irish towns are still governed. The Act was rendered necessary by the growing complexity of urban life and by the gradual realisation of the duties owed by the governing bodies of towns to the communities under their charge. The powers and duties of urban authorities had been left in doubt by the Municipal Corporations Act of 1840 which concerned itself chiefly with the constitution of municipal bodies. In a number of Irish towns certain essential functions of municipal government were carried out by bodies of Commissioners elected under the Act of 1828 already referred to. The provisions of this Act had been adopted by no

less than sixty-five towns at the date of the new Act. In other towns of some importance no form of municipal government existed.

In order to provide for the growing needs of existing urban communities already organised under some form of municipal government and to provide a suitable form of government for other aggregations of population the Towns Improvement (Ireland) Act was passed in the year 1854. It marked a considerable advance upon the Act of 1828. Twenty-four years after the enactment of the Towns Improvement Act the following testimony as to the working of the Act was paid by a Select Committee on Local Government and Taxation of Towns (Ireland) namely: "The provisions of the Act of 1854, as to the powers of the Commissioners, would require only slight amendments to be adequate for every purpose of municipal government."

The Towns Improvement Act provides that upon the application of twenty-one householders rated to the relief of the poor at a minimum of £8 per annum in any

town having a population at the date of the last census of 1,500 or upwards applying that the Act or any specified portion thereof may be carried into execution in such town within the boundaries specified, the Lord Lieutenant may order the Mayor or other Chief Magistrate of such town (being a corporate town) or the Chairman of the Municipal Commissioners under the Act of 1840 wherever the same shall be in force, or any two or more Justices of the Peace resident within ten miles of such town to convene a meeting for the purpose of considering the carrying of the Act into execution. The Act then prescribes conditions for ascertaining the ultimate desire of the inhabitants, the decision of a majority of the qualified voters binding the whole. In the case of a decision in favour of the adoption of the Act, and subject to the approval, formerly of the Lord Lieutenant and now of the Irish Local Government Board, the Act comes into operation in such town, and a body of Commissioners is elected by the qualified ratepayers for the conduct of local affairs.

At the time of writing an interesting object lesson in the application of the Act to an urban area is presented in the case of Howth, a number of the residents of which have presented the prescribed application.

The Act prescribes that the number of Commissioners for any town shall be not less than nine or more than twenty-one, the precise number being fixed by the Lord Lieutenant (now by the Local Government Board). One-third of the Commissioners are to go out of office each year, their places being filled by election.

As under the Municipal Corporations Act of 1840, so under the Act of 1854 different qualifications are prescribed for electors and for candidates for office. A more democratic franchise was created by the Towns Improvement Act than that created by the Act of 1840, a minimum valuation of £4 being substituted for the £10 valuation prescribed by the latter Act.

The Commissioners appointed under the Act were authorised to levy rates for the purposes of the Act, but within strict limits,

the maximum rate being fixed at one shilling and six pence in the pound.

The Lord Chancellor was empowered to select from the Commissioners a proper and qualified person to act as a Justice of the Peace for the purposes of the Act within the boundaries of the town. In practice, the Chairman of the Commissioners was until the passing of the Local Government (Ireland) Act, appointed a Justice of the Peace by the Lord Chancellor.

That this Act was highly appreciated by the inhabitants of Irish towns is evidenced by the fact that it was adopted by the inhabitants of no less than fifty-four of the sixty-five towns which were formerly governed by Commissioners elected under the Act of 1828. In 1878 there were seventy-seven Irish towns in which the Act was in force. Its provisions were also either wholly or partially adopted by a number of the Councils created under the Municipal Corporations Act of 1840.

CHAPTER XV.

The Public Health Act of 1874.

With the progress of the nineteenth century and the great development which took place in medical science during that century it was found necessary to considerably enlarge the functions of municipal authorities in Ireland. A regular code of Acts dealing with the important subject of public health was passed in the second half of the nineteenth century. Of these the most important from the point of view of municipal history was the Public Health (Ireland) Act of 1874. This Act created a new classification of Irish towns and had an important effect upon municipal government.

For the purposes of sanitary administration the Public Health Act of 1874 divided Irish cities and towns into two classes, namely, those having a population of 6,000 and over, and those having a population of less than 6,000. The municipal bodies

of towns in the former class were created "Urban Sanitary Authorities" for the purposes of the Act. Of the 111 towns which in the year 1878 had some form of municipal government, 40 had become "Urban Sanitary Authorities" pursuant to the provisions of this Act. The remaining 71 had become merged for sanitary purposes in the Poor Law Unions within which they were respectively situated, the Boards of Guardians of the Unions being constituted the "Rural Sanitary Authorities." The distinction thus set up between the towns of Ireland had an important effect upon their subsequent history.

The statutory restrictions as to taxation imposed upon municipal authorities by the Acts under which those authorities were constituted were removed by the Public Health Act of 1874 in regard to the expenditure coming within the scope of that and similar Acts. The powers conferred on municipal authorities for raising money by way of loan were likewise considerably extended.

While the powers of certain municipal

authorities were thus greatly enlarged by the Public Health Act of 1874, their duties were similarly increased. Furthermore, the new duties imposed by the Act were mandatory ones, municipal authorities being rendered liable to certain penalties and obligations in respect of matters relating to public health.

CHAPTER XVI.

The Conflict of Jurisdiction in Irish Towns.

In the closing decade of the nineteenth century municipal government in Ireland was organised under the three general Acts already mentioned, namely, The Lighting of Towns Act of 1828, The Municipal Corporations Act of 1840, and The Towns Improvement Act of 1854, or under special local enactments. The Townships of the County Dublin, for example, were constituted under special Acts. Under these various enactments the conduct of municipal affairs was largely vested in Councils or Boards of Commissioners. The jurisdiction of these bodies was not, however, exclusive. Certain important functions were vested in and were exercised by non-municipal authorities. Chief amongst these were the Grand Juries and the Boards of Guardians which were constituted under the Poor Relief (Ireland) Act of 1838.

In the system of local government which obtained in Ireland previously to the passing of the Local Government (Ireland) Act in 1898 the chief local authorities were the Grand Juries, the Board of Guardians, and the Municipal Councils or Boards of Commissioners. The whole area of Ireland was included within the sphere of activities of the Grand Jury—the chief county authority—and of the Board of Guardians—the Union authority. Consequently, in the majority of the urban areas, three wholly independent authorities operated. A considerable amount of over-lapping in the areas administered existed, with unfortunate results for the people affected. The Commissioners who were responsible for the planning of the Union system under the Poor Relief Act of 1838 took no account of either the already existing county organisation or of the areas under municipal government. The boundaries of municipal areas had in many cases been fixed before the Union organisation was contemplated. Where municipal boundaries were subsequently fixed, little attention seems to have been paid to the

areas of administration of other co-ordinate authorities. The result of the hap-hazard system of local government which had grown up in Ireland was that in some towns there were no less than four authorities exercising important functions within the municipal area; in the majority of the towns there were three authorities; in all, there were at least two. In cases where the municipal boundaries extended beyond the limits of a single county, the town was subject to the authority of two Grand Juries. Where, as in Dublin, the urban area included portions of two Unions, two Boards of Guardians exercised authority within the municipal boundaries. As taxation was levied by the County, the Union, and the Municipal authorities, the evils of the system can be easily imagined.

The Grand Juries in Ireland, unlike the similar bodies in England, exercised both fiscal and judicial functions in their respective counties. The origin of the fiscal functions of the Grand Jury dates back to the year 1635, in which year an Act of Parliament was passed, whereby a limited

authority over certain necessary county works was delegated to it. Since that date the powers of the Grand Jury over county works gradually increased until it became, and for many years continued to be, the most important taxing authority in the Irish local government system. The Grand Juries were made responsible for the carrying out of various public works in the counties of Ireland, such as the construction and maintenance of roads and bridges and of public buildings, such as court houses and gaols. In addition, portion of the cost of maintenance of lunatic asylums, county infirmaries, and reformatory and industrial schools was defrayed by the Grand Juries. The necessary expenditure was defrayed out of the county cess levied by the Grand Juries. For this purpose the Grand Juries enjoyed co-ordinate taxing authority within the cities and towns of Ireland. The members of the Grand Jury were selected by the High Sheriff of the County. In this connection mention has already been made of the arbitrariness exercised by the High Sheriffs in the selection of the members

of these important bodies. In Dublin and other important cities and towns, a large proportion, and frequently the majority of the grand jurors, was empanelled from the members of the governing bodies in the old, unreformed corporations. The result was to vest important powers of taxation in these small irresponsible bodies.

During the course of the nineteenth century efforts were made by the more important municipal bodies to escape from the fiscal control of the Grand Juries. The cities of Dublin, Cork and Limerick became entirely free from the fiscal control of the Grand Juries, while a number of other cities and towns became partially free. The majority of Irish towns, however, continued to be subject to the Grand Juries in respect to the matters within their purview.

The Boards of Guardians of the Poor Law Unions occupied an even more important place in the Irish local government system than did the Grand Juries. From the period of the inception of the Poor Law System, the government had used the Boards of Guardians as instruments for

the carrying out of important functions of local government. Originally intended for the sole purpose of providing relief in their necessities for the poor, the newly formed Boards had been seized upon by the government as suitable bodies for the carrying out of numerous duties imposed by the legislation of the nineteenth century. The Grand Juries had suffered from the defect of being transient bodies. Called into being at the beginning of each Assize period, they were discharged from office when that period came to an end. The Boards of Guardians, on the other hand, were permanent bodies, meeting weekly according to statutory regulation. In addition, they were to some extent representative of the people. The Grand Juries, on the contrary, were in the words of a well-known writer on Irish local government, Mr. Richard O'Shaughnessy, M.P., " the last great stronghold of local government by the minority."

The Public Health (Ireland) Act of 1874 gave to the Poor Law System an added importance in the system of local govern-

ment in Ireland. New and important powers in connection with Sanitary administration were thereby vested in the Guardians of the Poor Law Unions. The most significant effect from the point of view of municipal history was that all towns, the population of which was less than 6,000 inhabitants, became merged for all the purposes of sanitary administration in that of the Union organisation, the Unions being created "Rural Sanitary Districts," and their Boards of Guardians "Rural Sanitary Authorities." Out of 111 towns possessing some form of municipal government, no less than 77 became subject in this important respect to the control of the Boards of Guardians.

In connection with the many duties imposed upon the Union authorities, there was enjoyed a power of taxation throughout their respective areas. In the cities and towns of Ireland, accordingly, the poor rate collectors helped to swell the already large army which was engaged in extracting contributions from the unwilling and harassed rate-payers.

CHAPTER XVII.

The Local Government Act of 1898.

The Local Government (Ireland) Act of 1898 effected a much needed simplification in the Irish local government system. The Act provided for the setting up of a number of elective councils for the management of County, District, and Municipal affairs, a uniform electorate being established throughout Ireland for the election of these councils. The Irish Local Government Board was empowered to alter boundaries, including county boundaries, in order to provide for greater uniformity in the local government system. The Grand Juries were deprived of their fiscal functions, such functions being transferred to the County Councils. The Boards of Guardians lost their rating powers, their expenditure in future being provided for by grants made by the County Councils, Borough Councils, and Urban District Councils. Their duties were limited, chiefly,

to the provision of poor relief and medical assistance to the poor, their other duties being transferred to one or other of the Councils constituted by the Act. The Boards of Guardians which had hitherto contained an *ex officio* element, comprising one half the number of members and drawn from the local Justices of the Peace, were in future to be comprised solely of elective members. Women were made equally eligible with men for membership of all local government councils, save the County Councils. The Local Government Board was invested with important powers of control, particularly in the matter of finance, over the various councils set up by the Act. To assist the local councils in providing funds for the performance of the duties imposed upon them by the Act, a large annual subvention was made from imperial resources to the local bodies through the medium of the Local Taxation (Ireland) Account. The Act marked a considerable advance in the direction of democratic government, transferring as it did the conduct of local affairs in Ireland

to popularly elected councils. It has already met with a considerable measure of success. The system of local government established by the Act has already taken deep root in the affections of the people. The working of that system has attracted the admiration of and is a subject of study to students of social affairs in many countries.

Chief amongst the Councils instituted by the Local Government Act are the County Councils. The Act provided that a Council should be established in every administrative county and be entrusted with the management of the administrative and financial business of that county. The Act brought into being a new class of county, the "Administrative County"—the Act authorising the Local Government Board to alter, where necessary, the boundaries of the old judicial county. The "Administrative County" is the county for which a county council is elected. Six County Boroughs, namely, Dublin, Belfast, Cork, Limerick, Londonderry and Waterford were made adminis-

trative counties, and their municipal Councils, accordingly were invested with all the powers and duties of County Councils.

To the County Council there were transferred all the non-judicial business of the Grand Jury, the business of the Boards of Guardians with respect to making, levying, collecting and recovering the poor rate in so much of the county as was not comprised in an urban county district, and certain powers of the Boards of Guardians under specified Acts. In addition to the powers thus transferred from other bodies, the County Councils were constituted local authorities within the meaning of the Technical Instruction Acts, 1889 and 1891 ; they were made responsible for the provision and maintenance of sufficient accommodation for the lunatic poor of their respective counties ; they were empowered to appoint coroners for their respective counties, they were required to contribute to the maintenance of county infirmaries and fever hospitals, the management of which was partly vested in them ; and they were empowered to make bye-laws in-

relation to their respective counties. In addition, the Act provided for the transfer to the County Councils, by a Provisional Order of the Local Government Board, of the business of any Drainage Board or other public body, not being a District Council or Commissioners of a town or a Board of Guardians. For the purpose of any of their powers and duties the County Councils were empowered to acquire or lease land or easements or rights over or in land or water. The necessary rating powers for providing the income necessary to meet their own expenditure, and that of the Boards of Guardians and Rural District Councils hereinafter mentioned were assigned to the County Councils. The powers thus transferred to or granted to the County Councils gave them ample scope for the administration of the local county affairs. In a word, "Home Rule" was established in every administrative county in Ireland.

The system of County Councils thus set up embraced the whole area of Ireland, no part being excluded. Six of the hitherto

existing counties of cities and counties of towns were made "County Boroughs" by the Act, as above mentioned. Their municipal councils were invested with all the powers and duties of County Councils. The County of the city of Kilkenny and the counties of the towns of Carrickfergus, Drogheda, and Galway became part of the adjoining administrative counties.

The whole area of Ireland outside of the six County Boroughs mentioned was further subdivided into Urban Districts and Rural Districts to each of which a Council was assigned. The distinction between Urban Districts and Rural Districts was based upon that set up by the Public Health (Ireland) Act of 1874 between "Urban Sanitary Districts" and "Rural Sanitary Districts" and referred to in an earlier part of this work. All the "Urban Sanitary Districts" in existence at the date of the passing of the Local Government Act were constituted "Urban Districts" and the "Urban Sanitary Authorities" were constituted "Urban District Councils." Similarly the "Rural Sanitary Authorities"

became "Rural District Councils" and their districts "Rural Districts."

The "Rural Districts" constituted by the Act are thus coterminous with the Unions, as the Public Health Act of 1874 constituted the Boards of Guardians the "Rural Sanitary Authorities" for their respective Unions, at the same time merging in the Unions, for all purposes of sanitary government, towns with a population of less than 6,000 inhabitants. The Local Government Act provided that the Rural District Councillors should be the Guardians for their respective divisions. There is, accordingly, no distinct election of Boards of Guardians for these districts. To the Rural District Councils there were transferred by the Act, the business of the old baronial presentment sessions so far as respects their respective districts, the business of the Guardians under s. 150 of the Public Health Act of 1878, in the execution of regulations for the prevention of epidemic or infectious disease, and the business of the "Rural Sanitary Authorities" in their respective districts. The

business of the Boards of Guardians which was left untouched by the Act is transacted by the Rural District Councillors sitting in their capacity as the Board of Guardians. The Rural District Councils have no power of levying taxation. The money required to meet the expenses of a Rural District Council is supplied by the County Council upon demand.

Urban District Councils.

Under the Public Health Act of 1874 the Councils or Boards of Commissioners of towns having a population of 6,000 inhabitants or more were constituted "Urban Sanitary Authorities." The Local Government Act of 1898 transformed all the existing "Urban Sanitary Authorities" into "Urban District Councils" and their districts into "Urban Districts." Under this Act, accordingly, the six County Boroughs became "Urban Districts" and their Councils "Urban District Councils."

The Local Government Act transfers to an Urban District Council—the business of

any baronial presentment sessions so far as respects the district; and the business so far as respects the district of the Grand Jury of the county in relation to public works the expense of the maintenance of which is not wholly or partly leviable off the county at large, so far as the business transferred is not already the business of the district council. The Act further transfers to an Urban District Council—the business of the guardians as regards making, levying, and collecting the poor rate within the district; the business of the Board of Guardians as Burial Board, where the Council is not already the Burial Board for the district; the business of the Guardians under section 150 of the Public Health Act, 1878, in the execution of regulations for the prevention of epidemic, endemic, or infectious disease. An Urban District Council is further empowered by the Act to purchase a market or any franchise or right to hold a market or fair, and also to provide, lay out, and maintain a recreation ground or public walk.

An Urban District Council is, under the

Act, the sole rating authority within the Urban District, and pays to the County Council upon demand the amount apportioned to the district for county at large and union and district charges, and any urban charges leviable off an urban district.

Towns not Urban Sanitary Districts.

Towns which are not "Urban Sanitary Districts" form part of the "Rural Districts" adjoining, and as such are rated by the County Council. Each such town elects representatives on the Rural District Council according to the number of electoral divisions contained within the town. The Local Government Act, however, favours the formation of such towns into "Urban Sanitary Districts" and, incidentally, into "Urban Districts." Section 42 of the Act ordains that any town having a population exceeding 1,500, and having town commissioners under a general or local Act, may be constituted an "Urban Sanitary District" by order of the Local Government Board under section 7 of

the Public Health Act, 1878. Where no such commissioners exist, it is open to towns having the necessary population to petition for an Order applying the terms of the Towns Improvement Act of 1854 to such town, and thereby have the town constituted an Urban District. As already mentioned such an application on behalf of the residents of the Howth district is pending.*

With regard to the cities and towns of Ireland generally, whether County Boroughs, Urban Districts or Towns under Boards of Commissioners, the Local Government Act prescribes a uniform electorate for the election of Councils or Commissioners. The Act prescribes that the Burgesses in the six County Boroughs and the electors in the other cities and towns shall be the "local government electors" of the area concerned. The "local government electors" of any city or town are those whose names are inscribed in the "local government register of electors" or in the "local

* This application has been since granted and Howth is now governed by a Board of Town Commissioners elected under the Towns Improvement (Ireland) Act of 1854.

government supplement," in other words, the Parliamentary electors of the area concerned together with those persons who would but for being peers or women, or being registered as Parliamentary electors elsewhere, be entitled to be entered in the register of Parliamentary electors.

No special property qualification is required in the case of candidates for municipal office. The Acts of 1828, 1840 and 1854 all required a higher property qualification on the part of candidates for office than that required on the part of the electors. It is sufficient that the candidate's name be inscribed in the "local government register of electors." In the case of Urban District Councils and Town Commissioners, an alternative qualification, merely requiring a previous residence of twelve months within the district, is added.

By an Order of the Lord Lieutenant and Privy Council of Ireland made pursuant to the Act, women were declared ineligible for election or being chosen as County Councillors. Membership of Urban and Rural District Councils was, however,

thrown open to them by the Local Government Act, a privilege which was eagerly availed of. By a subsequent Act of the year 1911 women were rendered eligible for election or being chosen as County Councillors or as members of a Borough Council.

The combined result of the legislation of the nineteenth century, referred to in these chapters and of other Acts conferring powers upon local bodies in Ireland, is to restore to the general body of citizens and burgesses in the older cities and towns of Ireland that complete control of their civic destinies which was originally theirs and of which they were divested as the result of the penal legislation of the Stuart period. In the towns of more recent date, and notably those which were incorporated by King James I. and his immediate successors, the principle of self-government which was originally denied them has at length been put into practice. In all our Irish cities and towns wherein any form of municipal organisation exists important powers of local government are vested in the general

body of inhabitants. Whether those powers are to be used for the weal or woe of the people, the people themselves have to decide. In the new era which is about to open for Ireland it is important that the keenest interest should be aroused in matters of local as well as general administration. If this history of Municipal Government in Ireland serves to stimulate interest in the subject the writer of it will be amply rewarded for his pains.

THE END.

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